

CANADA / JUDGMENT

R. v. J.F.

2026 ONCA 136

COURT

Court of Appeal for Ontario

DECIDED

26 February 2026

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R. v. J.F. Collection Decisions of the Court of Appeal Date 2026-02-26 Neutral citation 2026 ONCA 136 Docket numbers COA-23-CR-0735 Judges van Rensburg, Katherine; Thorburn, Julie; Gomery, Sally A. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. J.F., 2026 ONCA 136[1] DATE: 20260226 DOCKET: COA-23-CR-0735 van Rensburg, Thorburn and Gomery JJ.A. BETWEEN His Majesty the King Respondent and J.F. Appellant J.F., acting in person Jeff Marshman, appearing as duty counsel Frank Au, for the respondent Heard: February 4, 2026 On appeal from the convictions entered by Justice Brian Dubé of the Superior Court of Justice, on January 27, 2023. REASONS FOR DECISION

- [1] The appellant was convicted of sexual assault and sexual interference and acquitted of one count of invitation to sexual touching. He was sentenced to five years' imprisonment. He appeals his convictions.
- [2] The appellant is the complainant's maternal uncle. At age four, the complainant disclosed to her mother that her vagina hurt because the appellant had rubbed it too hard earlier that day when he was taking care of her. That evening and the following day, the complainant's mother made four audio recordings on her cell phone in which the complainant described the appellant touching her vagina and backside with his hands, mouth and penis frequently when she was between the ages of two and four. The complainant also said that the appellant made her touch his crotch over his pants. The police were called. The complainant's underwear was tested, revealing the appellant's semen in the crotch area.
- [3] The trial judge admitted the hearsay statements of the complainant to her mother and the audio recordings on the basis after concluding that they were both necessary and reliable.
- [4] The appellant testified that he regularly babysat the complainant and that, as her babysitter, he occasionally had to clean her, for instance, by wiping her after she used the bathroom. He testified that on the day the complainant disclosed the assault, he had been babysitting, and that, at one point, he went to the bathroom, closed the door and masturbated to relieve anxiety. The complainant wanted to use the bathroom afterwards, and the appellant speculated that he had deposited semen on her underwear while helping her to remove her pants.

- [5] The trial judge rejected the appellant's testimony, finding that it was riddled with inconsistencies and that his explanation for the deposit of the semen was strange and overly convenient. The trial judge accepted the hearsay evidence of the complainant. He concluded that the statements to the mother, including the recorded statements, were generally consistent, that the complainant had no motive to lie, and that the contents of the complainant's statements were corroborated by the redness observed on the inside of her vagina and the presence of the appellant's semen on her underwear.
- [6] The appellant, assisted by duty counsel, argues that the trial judge erred in admitting and relying on the complainant's statement to her mother and the audio recordings. The appellant also asserts that the trial judge was biased against him and failed to properly consider his evidence explaining the presence of his semen on the complainant's underwear and denying that he sexually assaulted her.
- [7] We do not give effect to these arguments. The hearsay statements were properly admitted
- [8] The trial judge did not err in admitting the complainant's hearsay statements.
- [9] The trial judge articulated and applied the correct test for the admission of hearsay pursuant to *R. v. Khan*, [1990] 2 S.C.R. 531, at pp. 545-546. He considered whether the receipt of the hearsay statements as evidence at trial was reasonably necessary, in particular whether they ought to be admitted either as a result of the complainant's inability or unwillingness to provide meaningful evidence, or the possibility of trauma if she were to testify. He also considered the threshold reliability of the hearsay evidence.
- [10] While the standard of review for the admissibility of hearsay evidence is correctness, "[a]bsent a demonstrated error, decisions regarding whether the circumstances support threshold reliability and necessity, and the balance between probative value and prejudicial effect, are owed deference": *R. v. Bridgman*, 2017 ONCA 940, 138 O.R. (3d) 721, at paras. 37-38.
- [11] The appellant challenges the trial judge's findings on both the necessity of the hearsay evidence and its threshold reliability.
- [12] With respect to necessity, the trial judge considered a video of a police interview with the complainant conducted several days after her initial disclosure in August 2018, and a video of her meeting with Crown counsel in December 2019. Based on the age of this evidence, the trial judge was not satisfied that it demonstrated that the complainant was unwilling or incapable of testifying at trial. The trial judge concluded however that, if the complainant were to testify in court about the events involving the appellant, there was a real possibility that she would suffer trauma.
- [13] The appellant contends that because there was no evidence of an assessment of the complainant within two and a half years of the trial, there was no reasonable basis for the trial judge to draw this conclusion.

- [14] We disagree. The trial judge considered whether there was evidence “that an already traumatized child might be further traumatized by being questioned by strange [people] in a strange situation” and he noted that the court was not required to wait for proof of actual harm: *R. v. Rockey*, [1996] 3 S.C.R. 829, at para. 28. He considered the complainant’s conduct during the videotaped police interviews that showed symptoms consistent with trauma; her mother’s evidence about a setback she had suffered following her meeting with the Crown, including a recurrence of the bed-wetting and nightmares that occurred in the months after the initial disclosure; and the expert opinion evidence of a social worker who had previously worked with the complainant regarding the likely effect on the complainant if she were to testify. The trial judge did not accept defence counsel’s assertion that the social worker’s evidence should be given little weight because of bias; however, he concluded that, even in the absence of her opinion, and despite the dated nature of the remaining evidence, it was entirely possible that, if the complainant testified and relived the incident involving the appellant, she might suffer a detrimental setback.
- [15] Contrary to the appellant’s submissions, there was a firm evidentiary foundation for the trial judge’s finding that the hearsay evidence was necessary. While the trial judge was not prepared to infer the complainant’s unwillingness or inability to testify at trial from the evidence of her conduct at ages four and six, he reasonably inferred that there was a real possibility that she would be traumatized if she were to testify. The trial judge was entitled to accept the evidence of the mother and social worker, confirming that the complainant had suffered trauma after the initial disclosure, that she had improved over time, but then suffered a setback after meeting with Crown counsel in December 2019, and to infer from that evidence that there was a possibility of trauma if the complainant testified at trial.
- [16] The appellant also asserts that the trial judge erred in concluding that the hearsay evidence met the threshold reliability requirement. We disagree. The trial judge reasonably concluded that the reliability of the evidence was enhanced by the audio recordings, which also assisted the defence to identify and then challenge areas of potential concern in cross-examination of the mother. He noted that, although there were some leading questions, the complainants’ initial disclosure and the central elements of her account emerged naturally and without prompting; that the context of the complainant’s loving relationship with the appellant provided no motive to fabricate; and that the complainant, due to her age, could not be expected to have had knowledge of the sexual acts detailed unless her statements were truthful and accurate. Finally, the presence of corroborating evidence, including the redness on the inside of the complainant’s vagina and the presence of the appellant’s semen on her underwear provided compelling support for the complainant’s account. There is no basis for the appellant’s other assertions
- [17] The appellant asserts that, based on an alleged comment at the sentencing hearing, the trial judge must have been biased and did not consider his testimony about how his semen came to be deposited on the complainant’s underwear. He also complains that his lawyer did not help him.

- [18] We do not give effect to this argument. There is no transcript of the sentencing hearing or of the sentencing decision in the record on this appeal, and there is no ineffective assistance of counsel ground of appeal. An allegation of judicial bias requires cogent evidence to meet the high threshold of establishing that an informed person would conclude that the judge would not or did not decide the case fairly: *R. v. Grant*, 2016 ONCA 639, 342 C.C.C. (3d) 514, at para. 128. There is nothing that would suggest that the trial judge's rejection of the appellant's exculpatory account resulted from anything other than a careful and considered evaluation of his evidence.
- [19] There is no merit to the allegation of bias, nor is there any reason to interfere with the trial judge's treatment of the appellant's evidence.
- [20] For these reasons, the appeal is dismissed. "K. van Rensburg J.A." "Thorburn J.A." "S. Gomery 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.

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