

CANADA / JUDGMENT

# R. v. J.S.

2026 ONCA 17

## COURT

Court of Appeal for Ontario

## DECIDED

13 January 2026

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R. v. J.S. Collection Decisions of the Court of Appeal Date 2026-01-13 Neutral citation 2026 ONCA 17 Docket numbers COA-24-CR-1245 Judges Huscroft, Grant; Coroza, Steve A.; Gomery, Sally A. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. J.S., 2026 ONCA 17[1] DATE: 20260113 DOCKET: COA-24-CR-1245 Huscroft, Coroza and Gomery JJ.A. BETWEEN His Majesty the King Respondent and J.S. Appellant Michael Pasquale, for the appellant Maria Anghelidis, for the respondent Heard: January 9, 2026 On appeal from the conviction entered by Justice Mabel Lai of the Ontario Court of Justice, on July 21, 2023. REASONS FOR DECISION

- [1] The appellant was tried on one count of sexually assaulting the complainant, T.D. T.D. testified that, on one occasion, the appellant continued to have vaginal intercourse with her after she told him to stop. She testified that, on another occasion, the appellant digitally penetrated her vagina without her consent. The trial judge found that the first incident, but not the second, had been proved beyond any reasonable doubt. She accordingly convicted the appellant of sexual assault.
- [2] The appellant advanced two grounds of appeal. After hearing his submissions, we dismissed the appeal, with reasons to follow. These are our reasons.
- [3] First, the appellant contends that the trial judge's reasoning was inconsistent. Having found that she had reasonable doubt about T.D.'s account of the digital penetration incident, she should have found all of T.D.'s evidence inherently unreliable and acquitted the appellant. We disagree.
- [4] The trial judge explained at length why she had no reasonable doubt about T.D.'s account of the non-consensual vaginal intercourse. The appellant admitted that the vaginal intercourse began consensually. The only issue was whether he stopped when T.D. told him to. The trial judge did not believe the appellant's account of what occurred, nor did she find that his testimony or other evidence raised a reasonable doubt. Although T.D. could not remember some peripheral details, the trial judge found that her evidence about the assault itself was credible and reliable; she described her evidence as "compelling and candid" and noted that it lacked any material inconsistencies. She recognized that T.D. had a motive to fabricate but concluded that the allegation of recent fabrication had been rebutted by T.D.'s disclosure of

this assault to a friend before the motive arose. The trial judge rejected the argument that T.D. had no independent memory of the assault because she briefly consulted her statement to police while testifying.

- [5] The trial judge's reasonable doubt about the second allegation was not based on a finding that T.D.'s evidence was inherently unreliable. She said she believed T.D. but found that her account of the digital penetration incident was not entirely clear and that the allegation of recent fabrication of this incident had not been rebutted. The appellant also denied that the penetration took place. Given these findings, the trial judge had reasonable doubt about this allegation. This was not inconsistent with her conclusion with respect to the other allegation.
- [6] Second, the appellant says that the trial judge improperly relied on statements made by T.D. in text messages for their truth, even though T.D. did not adopt the statements during her testimony. We again disagree.
- [7] Twice in her reasons, at para. 21 and again in footnote 15, the trial judge recognized that the messages were hearsay and, as such, were inadmissible for the truth of their contents. She referred to T.D.'s messages only for context and to explain why she rejected the appellant's testimony that T.D. never told him why she ended the relationship and that she had never offered to pay him back for anything. The trial judge's findings that the text messages contradicted the appellant's testimony did not require her to find that the contents of T.D.'s messages were true, nor did she rely on them for their truth.
- [8] The appeal is therefore dismissed. "Grant Huscroft J.A." "S. Coroza 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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Prepared on 28 October 2026 · Esheria