

CANADA / JUDGMENT

R. v. Khawaja

2026 ONCA 304

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Khawaja

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Roberts, Lois B.; Thorburn, Julie; Favreau, Lise G.

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COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Khawaja, 2026 ONCA 304[1]

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Roberts, Thorburn and Favreau JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Umair Khawaja

Appellant

Laura Remigio and Jocelyn Heaton, for the appellant

Baaba Forson, for the respondent

Heard: March 10, 2026

On appeal from the convictions entered by Justice J. Christopher Corkery of the Superior Court of Justice on November 10, 2021, and from the sentence imposed on July 8, 2022.

Favreau J.A.:

A. overview [1] The appellant was convicted of sexual interference, child luring, sexual assault, committing an indecent act and making sexually explicit materials available to a child.[2] The appellant received a global sentence of seven years in custody.

[2] The appellant submits that the trial judge misapprehended the complainant's evidence, applied uneven scrutiny to the appellant's evidence, erred in his W.(D.) assessment and failed to resolve material inconsistencies in the complainant's evidence.[3] The appellant also argues that the almost eight-month delay between the trial judge's pronouncement of guilt and the release of his reasons undermines the reliability of the verdict. The appellant further seeks leave to appeal his sentence, which he argues is demonstrably unfit.

[3] After hearing submissions from the appellant, the court dismissed the appeal with reasons to follow. These are the reasons.

B. background [4] At the time of the offences, the complainant was a 15-year-old girl. She lived in Cambridge, Ontario with her family. She has a brain malformation which impacts her executive functioning and cognitive thinking.

[5] At the time of the offences, the appellant was 28 years old and lived in the Peterborough region. He and his father lived in an apartment that was above a bakery owned by his father, where they both worked.

[6] The complainant started using social media, including Snapchat, when she was 13 years old. Her evidence was that a number of men communicated with her via Snapchat, including the appellant, who used the username cigarettes100.[4] The appellant sent her a friend request, which she accepted about one year later. During their communications, the appellant told the complainant he was 26 years old and she told him she was 14, almost 15, years old. The complainant testified that the appellant sent her sexual messages, images and videos,

including an image of a penis. On at least one occasion, he offered to pay her money to have sexual intercourse with him, which she declined.

- [7] The complainant testified that, on November 16, 2018, the appellant asked her to come help work in the bakery because they were short staffed. He told her there would be other girls there. The complainant accepted because her family needed money.
- [8] On November 16, 2018, the appellant ordered an Uber, which he paid for, to pick up the complainant in Cambridge and take her to the bakery in the Peterborough region.
- [9] The complainant testified that, after she arrived in the Peterborough region, she spent some time helping in the bakery. She then asked if she could go home, to which the appellant answered “no”. The appellant next took her to the apartment upstairs and into a bedroom, where he had forced sexual intercourse with her at least three times, including one instance of anal penetration. The forced sexual conduct occurred over the course of the night.
- [10] The next morning, the complainant left in a taxi from a grocery store across the street from the bakery. The appellant admitted at trial that he paid for the complainant’s taxi ride back to Cambridge.
- [11] The appellant did not testify at trial. The appellant’s father and sister were called as defence witnesses. They testified that the sister was visiting from Kitchener on the date of the alleged assaults and that she was staying in the bedroom where the complainant claims the forced sexual contact took place. On cross-examination, they both admitted that they were not sure of the date when the sister returned to Kitchener.
- [12] The trial judge found the appellant guilty of sexual interference, child luring, sexual assault, committing an indecent act and making sexually explicit materials available to a child. The last three convictions were stayed pursuant to Kienapple. The appellant was sentenced to five years for sexual interference and two years consecutive for child luring, for a total of seven years.

C. Issues and analysis [13] The appellant raises several issues on appeal that I would summarize as follows:

- (a) The trial judge misapprehended the evidence supporting the conviction for child luring;
- (b) The trial judge erred in his W.(D.) analysis and applied uneven scrutiny when assessing the evidence of the appellant’s father and sister;
- (c) The trial judge erred in failing to resolve material inconsistencies in the complainant’s evidence;
- (d) The reliability of the verdict is undermined by the eight-month delay between the date of the guilty verdict and the reasons for decision; and

- (e) The sentence was disproportionate to sentences imposed in similar circumstances and failed to properly consider mitigating circumstances.

[14] I explain below why the panel was not persuaded by the grounds of appeal raised by the appellant and why the appeal was dismissed.

Issue 1: Misapprehension of evidence

[15] The appellant submits that the trial judge misapprehended the evidence relevant to the conviction for child luring. I see no such error.

[16] In advancing this ground of appeal, the appellant focuses on one sentence in the trial judge's reasons set out in a paragraph that summarizes his conclusions on each of the convictions:

I am satisfied beyond a reasonable doubt that [the appellant] is guilty of sexual assault contrary to section 271, and that he is guilty of sexual interference contrary to section 151. I am satisfied that he, as cigarettes100, as Evrin, sent the photo of a male exposing his penis to [the complainant], a person under the age of 16, contrary to section 173(2) of the Criminal Code, and I am satisfied that as cigarettes100, Evrin, he lured a child, [the complainant], by means of telecommunication contrary to section 172.1(1)(b) of the Criminal Code. I am satisfied that in sending the photo of the exposed penis, he provided explicit materials to a child contrary to section 171.1(1)(b) of the Criminal Code. [Emphasis added.]

[17] The appellant zeroes in on the underlined sentence above, and suggests that the trial judge found the appellant guilty of child luring on the basis of his finding that the appellant sent a photo of an exposed penis to the complainant. The appellant submits that, in making this finding, the trial judge misapprehended the evidence regarding the identity of the person who sent the complainant a photo of a penis.

[18] The primary flaw with this ground of appeal is that, reading the sentence at issue and the trial judge's reasons as a whole, the child luring conviction was not based on the finding that the appellant sent the complainant a photo of an exposed penis. In effect, the appellant fails to read the sentence at issue disjunctively, as it is meant to be read. Reading the sentence properly, the trial judge clearly first found the appellant guilty of committing an indecent act, contrary to s. 173(2) of the Criminal Code, by sending the complainant a photo of an exposed penis. Secondly, and separately, the trial judge also found the appellant guilty of child luring, contrary to s. 172.1(1)(b). The conviction for child luring is not based solely on the photo of the penis. Rather, while the trial judge did not explicitly explain why he found the appellant guilty of child luring, the reasons as a whole reveal that the trial judge accepted the complainant's evidence that the appellant used telecommunications to ask her to have sex with him in exchange for money and, later, to come to the Peterborough region to work in the bakery in order to commit sexual offences against her.

- [19] In any event, I am not persuaded that the trial judge misapprehended the evidence regarding the issue of whether the appellant sent her a photo of his penis. In advancing this argument, the appellant relies on the fact the complainant ascribed the same name, “Evrin”, to Snapchat user cigarettes100 and to another user, jkissner97. Her evidence was that she believed that cigarettes100 and jkissner97 were the same person. The appellant admitted to being cigarettes100 but not jkissner97.
- [20] The appellant argues that the trial judge failed to understand that communications from cigarettes100 and jkissner97 would both appear as Evrin to the complainant, and she could therefore not tell whether the image of the penis came from cigarettes100 rather than jkissner97.
- [21] However, the trial judge addressed this issue. He found that the complainant was unequivocal in her evidence that the appellant sent her a photo of a penis. The trial judge found that the complainant had a specific recollection of cigarettes100 sending her the image. The complainant testified that she could see that the messages came from “Evrin”, who was also identified in lighter writing as “cigarettes100” on her screen. She also had specific recollections of checking the username. The trial judge found the complainant to be credible and he accepted this evidence, as he was entitled to do. He did not misapprehend the evidence on this point.

Issue 2: Application of W.(D.) and uneven scrutiny

- [22] The appellant submits that the trial judge failed to properly apply W.(D.) to the defence evidence. In his factum, the appellant also raises the issue of uneven scrutiny, but, from the oral submissions, it is evident that these two arguments are related.
- [23] The appellant’s father and sister provided seemingly exculpatory evidence. The primary relevance of their evidence was to suggest that the complainant could not have been in the apartment on the night of November 16, 2018 because the sister was visiting and staying in that bedroom on that date. The appellant’s father and sister also provided evidence that the appellant did not have a tattoo the complainant claimed she saw in a photo he sent her on Snapchat.
- [24] The appellant submits that the trial judge did not explain why he did not believe their evidence, and why it did not leave him with a reasonable doubt. I agree that the trial judge did not mechanically apply the three-part W.(D.) framework. However, the trial judge is presumed to know the law: *R. v. G.C.*, 2021 ONCA 441, at para. 10; *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at para. 74. This presumption especially applies to settled principles: *G.C.*, at para. 10. Trial judges are not required to recite W.(D.) mechanically: *R. v. S.M.*, 2025 ONCA 18, at para. 23. The trial judge’s reasons demonstrate that he understood and properly applied the threshold of the Crown’s onus of proof beyond a reasonable doubt: *S.M.*, at para. 23. The trial judge did not conduct a credibility contest between the complainant’s evidence and the defence evidence: *S.M.*, at para. 24.

- [25] It is evident from the trial judge's reasons read as a whole that he rejected the defence witnesses' evidence and that it did not leave him with a reasonable doubt. Notably, there was no dispute that the complainant was in the Peterborough area on the relevant dates and that she was brought there by an Uber paid for by the appellant. There was also no dispute that she left the same area the next morning in a taxi paid for by the appellant. In addition, the complainant gave evidence describing the inside of the bedroom, which the trial judge found confirmed her evidence that she had been in the bedroom.
- [26] Further, there were self-evident frailties in the father and sister's evidence. They both admitted during cross-examinations that they were uncertain about the dates of the sister's visit. In addition, the sister relied on contemporaneous texts to support her contention that she was in the Peterborough area staying at the apartment at the relevant time, but the texts were not specifically about her leaving or arriving at the apartment.
- [27] Finally, the trial judge explicitly addressed the discrepancy between the evidence of the complainant and the evidence of the father and sister regarding whether the appellant had a tattoo and evidently found that it did not leave him with a reasonable doubt.

Issue 3: Material inconsistencies in the complainant's evidence

- [28] While this argument was not vigorously pursued in oral argument, the appellant's factum alleges the trial judge minimized or failed to resolve material inconsistencies in the complainant's evidence. The appellant alleges the complainant testified about an additional sexual assault for the first time at trial and was inconsistent in her description of the sexual assaults.
- [29] I see no merit to this argument. A trial judge's credibility findings are entitled to particular deference: G.F., at para. 81. The trial judge considered the frailties in the complainant's evidence and explained why he nonetheless accepted her evidence. The trial judge found the complainant provided reasonable explanations for the inconsistencies, given her personal circumstances.

Issue 4: Delay between the verdict and the reasons

- [30] The appellant submits that the delay between the verdict and the reasons for conviction suggests that the trial judge engaged in after-the-fact reasoning that undermines the reliability of the verdict. I disagree.
- [31] I start with a review of the chronology of events between the trial and the delivery of the reasons, followed by a discussion of the relevant legal principles and their application in this case.
- a. Chronology

- [32] The trial judge gave his oral reasons for conviction on July 5, 2022. The events leading up to this date were as follows:
- (a) The trial judge heard pre-trial motions in May 2021.
 - (b) On July 22, 2021, the trial judge provided his ruling on the pre-trial motions with reasons to follow.
 - (c) The trial started on August 9, 2021. On August 16, 2021, the evidence was completed. On August 17, 2021, the submissions were completed. The matter was adjourned to September 23, 2021.
 - (d) On September 23, 2021, the trial judge stated that he was not in a position to deliver his judgment, but anticipated that he could do so during the week of November 8, 2021. The matter was rescheduled to November 10, 2021.
 - (e) On November 10, 2021, the trial judge found the appellant guilty on all charges. He then stated that a date was needed for sentencing and that he would give his reasons for judgment on that date. The matter was adjourned to December 2, 2021 to set a date for sentencing submissions.
 - (f) On December 2, 2021, the appellant advised that he wanted to get a psychological assessment before making sentencing submissions. The matter was adjourned to be spoken to on March 14, 2022, at which point it was anticipated that the court would schedule a date for sentencing.
 - (g) On March 14, 2022, the appellant advised that he did not intend to file a psychological assessment. The court scheduled sentencing submissions for April 29, 2022.
 - (h) On April 29, 2022, the Crown and the defence attended to make sentencing submissions. Before doing so, the trial judge advised that his reasons on the Charter application and his reasons for judgment would be provided together, and that he would then proceed with sentencing. After the parties made their sentencing submissions, the matter was adjourned to May 12, 2022 “for sentencing and reasons to be delivered.”
 - (i) On May 12, 2022, the trial judge did not deliver his reasons. He did not provide a specific reason for not doing so although he made a reference to health issues. On that date, the appellant’s counsel requested that the reasons for conviction be delivered separately from the reasons for sentence. The trial judge granted the request because he was satisfied the reasons for conviction could give rise to an issue requiring additional sentencing submissions. On that basis, the court scheduled June 24 and 30, 2022 for the delivery of reasons for conviction and for sentencing, respectively.
 - (j) On June 24, 2022, there were technical problems, and the trial judge was unable to provide his reasons for judgment. The court adjourned the delivery of reasons for judgment to June 30, 2022 and sentencing to July 5, 2022.

- (k) On June 30, 2022, the trial judge provided his reasons on the Charter applications. He did not have enough time to deliver his reasons for conviction. The matter was adjourned to July 5, 2022.
- (l) On July 5, 2022, the trial judge provided his reasons for conviction.
- (m) On July 8, 2022, the trial judge delivered his reasons for sentence.
- [33] Therefore, there were almost 11 months between the end of trial and the delivery of reasons for conviction, and almost 8 months between the guilty verdict and the reasons for conviction.
- b. Legal principles
- [34] There is a presumption that the reasons of a trial judge reflect the reasoning that led to the verdict: *R. v. Teskey*, 2007 SCC 25, [2007] 2 S.C.R. 267, at para. 19; *R. v. Cunningham*, 2011 ONCA 543, 106 O.R. (3d) 641, at para. 13. This presumption of integrity applies even where the trial judge provides reasons after delivering a verdict, including after a lengthy delay between the verdict and the delivery of reasons. Delay in delivering reasons, on its own, will not rebut the presumption: *Teskey*, at para. 23; *R. v. Artis*, 2021 ONCA 862, 408 C.C.C. (3d) 133, at para. 18. However, the longer the delay between the verdict and the reasons for decision, “the greater the concern that the requisite link between the two does not exist”: *Cunningham*, at para. 37; *Artis*, at para. 18.
- [35] In *Teskey*, at para. 18, the Supreme Court explained that, when reasons are provided after the verdict, especially when it is obvious that they were written after the verdict is delivered, there may be a legitimate concern that the trial judge engaged in “result-driven reasoning” by “defending the verdict rather than arriving at it.” The question is whether a reasonable person would find that the written reasons reflect “an after-the-fact justification for the verdicts rather than the articulation of the reasoning that led to the decision”: *Teskey*, at para. 23; *Artis*, at para. 16; and *Cunningham*, at para. 14. The onus is on the appellant to present cogent evidence to displace the presumption: *Teskey*, at para. 21.
- [36] The types of circumstances that may constitute evidence to rebut the presumption of integrity and impartiality include: (a) the trial judge’s difficulty in arriving at a verdict or willingness to reconsider a verdict; (b) a bare declaration of guilt without any underlying reasoning; (c) the nature of the evidence and whether it required a detailed analysis before a verdict could be reached; (d) whether the trial judge failed to respond to repeated requests for reasons; (e) a lack of explanation for the delay; and (f) indications in the reasons that they were crafted long after the verdict was given: *Teskey*, at para. 23. I note that this list of factors is not comprehensive. Other factors may be relevant depending on the circumstances of the case.
- c. Analysis

- [37] In this case, while the delay between the reasons and the verdict was lengthy, the appellant has not identified anything in the record to suggest that the trial judge engaged in result driven reasoning or after-the-fact justification for the verdict such that the presumption of integrity is displaced.
- [38] First, there is no indication that the trial judge had any difficulty in reaching a verdict.
- [39] Second, this was not the type of case that required a detailed review of the evidence in order to reach a verdict. The primary issue was the complainant's credibility. There was significant independent evidence that supported her version of events. For example, the appellant conceded that the complainant took an Uber to the bakery, and that he paid for the taxi that took her home. In addition, the complainant accurately described the inside of the bakery, including its usual closing process, and accurately described the bedroom above the bakery where she was assaulted, thereby supporting her evidence that she was in the bakery and the bedroom where the assaults took place.
- [40] Third, counsel did not make repeated requests for the trial judge to deliver his reasons. On the contrary, after the trial judge delivered the verdict, he indicated that he intended to deliver his reasons for conviction at the same time as sentencing. This was undoubtedly an unusual plan given that reasons for conviction would normally be helpful to defence counsel and Crown counsel in making sentencing submissions. However, the appellant did not raise any concerns about this until May 12, 2022, after the parties made sentencing submissions. On that day, as reviewed in the chronology above, the appellant requested that the trial judge deliver his reasons before sentencing. The trial judge acceded to that request on the basis that the reasons for conviction could give rise to the need for further sentencing submissions.
- [41] Fourth, while there is no clear explanation for the delay, it does appear in part to have been caused by the trial judge's intention to deliver his reasons for conviction at the same time as his sentencing. This plan first required the parties to make sentencing submissions, which were in part delayed by the appellant's request for an adjournment to obtain a psychological assessment. In addition, on May 12, 2022, the trial judge referred to health issues that may have caused further delay. On June 24, 2022, there was additional delay due to technical issues.
- [42] Finally, there is no indication in the reasons themselves that the trial judge engaged in an after-the-fact justification for the verdict. In other cases where the court concluded that the presumption of integrity was rebutted, the reasons showed deficiencies, such as superficial or rushed reasoning, appeared to be drafted to respond to grounds of appeal, or referred to transcripts that were only available and reviewed after the verdict: *Cunningham*, at paras. 45-46; *R. v. Worrell*, 2025 ONSC 6859, at paras. 58, 68 and 76. There are no such indicia in this case.

- [43] The appellant submits that the errors in the trial judge's reasons demonstrate that he crafted an after-the-fact justification for the verdict. For example, he relies on his contention that the trial judge misapprehended the complainant's evidence or that he failed to consider evidence that contradicted the complainant's evidence. However, as reviewed above, I am not persuaded that the trial judge made any such errors. More importantly, the trial judge's reasons for conviction engage with the evidence and are responsive to the issues at trial. The reasons do not betray an after-the-fact justification for the verdict.
- [44] There was a lengthy delay between the verdict and the reasons for conviction. However, in the circumstances of this case, the delay was explained and the appellant has not rebutted the presumption of integrity.

Issue 5: Sentence

- [45] The appellant seeks to appeal his seven-year global sentence on the basis that it is not proportionate to sentences imposed for similar offences and that the trial judge erred in failing to take sufficient account of the mitigating factors, especially the fact that the appellant was a first-time offender.
- [46] I see no merit to the sentence appeal.
- [47] This court owes significant deference to a sentencing judge's decision. The court will only intervene where: (1) the sentence imposed is demonstrably unfit; or (2) where the sentencing judge committed an error in principle that had an impact on the sentence. Errors in principle include an error of law, a failure to consider a relevant factor or an erroneous consideration of an aggravating or mitigating factor: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 44, 51; *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at paras. 26-28.
- [48] In this case, the sentence was clearly fit and the trial judge committed no errors.
- [49] The appellant had forced vaginal intercourse with a vulnerable 15-year-old girl, after inducing her to travel from her home community to a different city under false pretenses. These were very serious offences and they had a devastating impact on the complainant.
- [50] In *Friesen*, at para. 5, the Supreme Court emphasized the seriousness of sexual offences against children, stating that "[s]entences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children". The court further stated that sentences for these types of offences must increase and that "mid-single digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances": *Friesen*, at paras. 5, 114.
- [51] The appellant purports to rely on two post-*Friesen* decisions to argue that the sentence imposed on him is disproportionate to sentences imposed on similar offenders in similar circumstances: *R. v. Fassassi*, 2021 ONSC 3863; *R. v. D'Orazio*, 2024 ONSC 807. The

circumstances in those cases are distinguishable. D’Orazio was the result of a guilty plea, which was a significant mitigating factor not present here. The sentencing judge in that case stated that “[h]ad Mr. D’Orazio not pleaded guilty the sentence would have been substantially more”: D’Orazio, at para. 54. Fassassi involved two victims. The offender was sentenced to three and four years respectively for sexual interference against each victim, to be served consecutively. The sentencing judge explained that, apart from considerations of totality, a sentence of five years or more for each count of sexual interference could have been proportionate: Fassassi, at para. 52. These two isolated Superior Court decisions do not undermine the fitness of the sentence imposed in this case.

- [52] The trial judge also did not err in failing to take account of the appellant’s mitigating circumstances. Specifically, he recognized that the appellant was a first time offender. However, he rightly noted the appellant’s significant moral blameworthiness. He also took into account the significant aggravating factors, including that the complainant was a young vulnerable girl, and that the appellant induced her out of her community with the promise of money and then isolated her with no escape.
- [53] It is not for this court to reweigh the mitigating and aggravating factors. In any event, in the circumstances of this case, the trial judge made no error in assessing the mitigating and aggravating factors and in arriving at a fit sentence.

D. disposition [54] I would dismiss the appeal from conviction. I would also grant leave to appeal the sentence but dismiss the sentence appeal.

Released: April 28, 2026 “L.B.R.”

“L. Favreau J.A.”

“I agree. L.B. Roberts J.A.”

“I agree. Thorburn 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 convictions for sexual assault, committing an indecent act and making sexually explicit materials available to a child were stayed pursuant to *Kienapple v. R.*, [1975] 1 S.C.R. 729.
- [3] *R. v. W.(D.)*, [1991] 1 S.C.R. 742.
- [4] The appellant brought an application pursuant to s. 276 of the Criminal Code, which was allowed. On this basis, the complainant was examined about communications, including sexual communications, she received on Snapchat from other men.

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