

CANADA / JUDGMENT

R. v. L.S.

2026 ONCA 1

COURT

Court of Appeal for Ontario

DECIDED

5 January 2026

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Collection

Decisions of the Court of Appeal

Date

2026-01-05

Neutral citation

2026 ONCA 1

Docket numbers

COA-23-CR-0343

Judges

Fairburn, J. Michal; Sossin, Lorne; Monahan, Patrick J.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. L.S., 2026 ONCA 1[1]

DATE: 20260105

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Fairburn A.C.J.O., Sossin and Monahan JJ.A.

BETWEEN

His Majesty the King

Respondent

and

L.S.

Appellant

Nate Jackson, for the appellant

Eunwoo Lee, for the respondent

Heard: December 16, 2025

On appeal from the conviction entered by Justice Aubrey D. Hilliard of the Ontario Court of Justice, on November 22, 2022, and from the sentence imposed on April 11, 2023.

REASONS FOR DECISION

- [1] This is an appeal from conviction for sexual interference and an appeal against sentence. The appellant was a close family friend of the complainant. The sexual activity took place when she was between nine and fifteen years of age. The crimes included all manner of degrading sexual touching of the child.
- [2] In his oral submissions on the conviction appeal, the appellant focused on two of the issues raised in his factum. First, he argues that the trial judge erred when admitting the complainant's 1.5 hour videotaped statement to the police pursuant to s. 715.1 of the Criminal Code. During that statement, she occasionally referenced notes that she had on her phone. Those notes were never disclosed to the defence because they were accidentally deleted.
- [3] The appellant does not dispute that the prerequisites to admitting a statement pursuant to s. 715.1 were met: *R. v. P.S.*, 2019 ONCA 637, at paras. 12-13. Instead, for the first time on appeal, he maintains that the complainant's police statement interfered with the proper administration of justice and that its prejudicial effect outweighed its probative value. He argues that the entire statement was tainted by the fact that it might have been scripted and read verbatim from the complainant's notes.
- [4] As for the experienced defence counsel at trial, who did not raise an objection to the admission of the statement, the appellant brings an ineffective assistance of counsel claim. He contends that the failure to object to the admission of the statement in these circumstances, specifically against the backdrop of the lost notes, could reflect nothing other than ineffective assistance.
- [5] We do not give effect to this argument.

- [6] In our view, there was good reason for the trial counsel not to raise an objection to admission. With or without the notes, the statement was admissible under s. 715.1 of the Criminal Code.
- [7] Overall, the complainant did not look at her notes much while providing her police statement and, when she did, it was largely to ensure that she had covered the matters she wanted to raise or to find a specific date or password. She was not reading from her notes or following a script while she was giving her police statement.
- [8] Moreover, the judge was entirely aware that the complainant was referencing notes that had not been obtained by the police. The complainant was present in court and watched the videotaped statement along with everyone else. She was then examined and cross-examined about her notes, and she testified that they had been inadvertently lost. The fact that the notes were not available to the defence was nothing more than a matter of weight for the trier of fact to consider when assessing the complainant's evidence and the veracity of her account.
- [9] We see no issue with the fact that trial counsel did not object to the admission of the statement at trial and we would not interfere with the trial judge's admissibility ruling.
- [10] Second, the appellant argues that the trial judge's reasons contain a reversible error because she twice characterized his evidence as "convenient". By describing the appellant's evidence variously as "a convenient explanation" and "convenient to his own narrative," the appellant argues that the trial judge improperly rejected his evidence on the basis that it was tailored to match disclosure and that it could not be tested in court. He also argues that she used a finding of fabrication as evidence of his guilt. Respectfully, we do not see it the same way.
- [11] The trial judge's reasons must be read in context. Read as a whole, and against the backdrop of the entire record, the trial judge made none of the alleged errors. When the trial judge referred to the "convenient" nature of the appellant's testimony, she was really referencing the fact that the appellant said he was incapable of certain sexual acts because of an accident that had rendered him a paraplegic. This was contradicted by the appellant's own acknowledgement that he was the father of a child that was conceived after he became a paraplegic. This became one of the centrepieces of his evidence.
- [12] Referencing the appellant's evidence as "convenient" was really nothing more than a shortform way of rejecting his evidence as lacking in credibility. This rejection of his evidence is unsurprising in the circumstances. As the trial judge explained:

[The appellant] admittedly conceived a child through sexual intercourse after his accident and after he was rendered paralyzed from the chest down. That is the best evidence, in my view, the fact that [the appellant] is physically capable of maintaining, obtaining, and maintaining an erection and of ejaculating.

He himself testified that his wife ‘did all the work.’ That is in keeping with the evidence of [the complainant] that so long as she was physically stimulating his penis, [the appellant] could maintain an erection. She testified, as [the appellant] confirmed, that as soon as direct stimulation ceased, [the appellant’s] penis would become flaccid.

- [13] The trial judge gave clear reasons for rejecting the appellant’s evidence. Those reasons were well-justified and did not cross over to erroneous inferences.
- [14] The appellant also appeals against the eight-year sentence imposed.
- [15] He raises numerous issues but relies primarily on the suggestion that the trial judge failed to consider the collateral consequences arising from the fact he is a paraplegic. He argues that this will necessarily make his time in custody more difficult to serve.
- [16] The trial judge took this fact into account, specifically noting that she had considered the fact that his experience of custody “is likely to be more difficult than a person without his physical disabilities” as a “collateral consequence in determining the appropriate sentence.” The trial judge’s observation that she had taken the appellant’s physical condition into account in sentencing is to be taken at face value. She was not required to assign a precise quantum of sentence reduction arising from the collateral consequences.
- [17] The reasons demonstrate that the trial judge was alive to the principle of restraint, given that the appellant was a first offender with no criminal record.
- [18] His crime, however, was most egregious. It reflected a serious breach of trust, taking a little girl who was often entrusted to his care and repeatedly subjecting her to relentless sexual abuse over many years. She called him “Uncle” and he was seen as part of her “family.”
- [19] The victim impact statements from both the mother and daughter speak volumes. Recovering from the appellant’s abuse and betrayal of trust will sadly be a lifelong endeavour for them both.
- [20] The appellant would give the child gifts and money and tell her she would have to find a way to pay for them later. Repayment involved sexual activity. It all became so normalized for her that she would watch videos on a tablet to distract herself from what was happening while laying on his bed being abused. We need not recount these ghastly crimes in more detail. This child was denied her childhood.
- [21] Eight years in custody is not a demonstrably unfit sentence.
- [22] The conviction appeal is dismissed. Leave to appeal sentence is granted and the sentence appeal is dismissed.

“Fairburn A.C.J.O.”

“L. Sossin J.A.”

“P.J. Monahan J.A.”

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- [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 29 October 2026 · Esheria