

CANADA / JUDGMENT

R. v. R.J.

2026 ONCA 274

COURT

Court of Appeal for Ontario

DECIDED

17 April 2026

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R. v. R.J. Collection Decisions of the Court of Appeal Date 2026-04-17 Neutral citation 2026 ONCA 274 Docket numbers COA-25-CR-0010 Judges van Rensburg, Katherine; Copeland, Jill M.; Gomery, Sally A. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. R.J., 2026 ONCA 274[1] DATE: 20260417 DOCKET: COA-25-CR-0010 van Rensburg, Copeland and Gomery JJ.A. BETWEEN His Majesty the King Respondent and R.J. Appellant Neill Fitzmaurice and Juan Lopez, for the appellant Evan Akriotis, for the respondent Heard: April 9, 2026 On appeal from the convictions entered by Justice Apple C. Newton-Smith of the Superior Court of Justice, on November 1, 2024, and from the sentence imposed on March 21, 2025. REASONS FOR DECISION

- [1] The appellant appeals his convictions for sexual assault and sexual interference.[2]
- [2] The appellant's wife ran a daycare from their home for several years. She was the complainant's godmother, and a close friend of the complainant's mother, and she had taken care of the complainant since she was an infant. During the two-year period in question, as a favour to her mother, the complainant was dropped off around 5:30 a.m. at her godmother's house, before the other children arrived at the daycare. The appellant would sometimes be alone with the complainant before he left for work around 6:00 a.m. The alleged assaults began shortly after the complainant turned thirteen.
- [3] The complainant testified that the appellant had touched her breasts, sometimes with both his hands and mouth, and her vagina, with his hands, repeatedly when she was between 13 and 15 years of age, and that on one occasion he had tried to put his penis in her mouth.
- [4] The trial judge was convinced beyond a reasonable doubt that the appellant had repeatedly sexually assaulted the complainant between February 1, 2018 and June 25, 2020, and she found him guilty as charged.[3]
- [5] The appellant contends that the trial judge made three reversible errors, any one of which would entitle him to a new trial.

- [6] First, the appellant submits that the trial judge used her disbelief of the appellant's evidence to conclude that he had fabricated his evidence and then, in the absence of independent evidence of fabrication, relied on the finding of fabrication to bolster and accept the complainant's evidence. He contends that this is a necessary inference from the way the trial judge structured her reasons. He asserts that the trial judge's use of the finding of fabrication contravenes the principles set out in *R. v. Iqbal*, 2021 ONCA 416, 406 C.C.C. (3d) 208.
- [7] We disagree.
- [8] The complainant, her mother, and the appellant's wife testified at trial. The complainant testified that sometimes after he touched her breasts and/or vagina, the appellant tried to give her money. The appellant's wife testified that she had seen the appellant give the complainant money on one occasion, which had prompted her to ask the complainant whether the appellant was touching her, and to reach out to the complainant's mother. The complainant's mother recalled being contacted by the appellant's wife, who told her she had seen the appellant give the complainant money and asked her to talk to her daughter about it. At the time, this had not concerned her. The appellant testified that he had given the complainant \$20 for school supplies on one occasion, after his wife had asked him to give her money because she was helping with the paperwork for the daycare. He said that this happened during the summer, and that his wife had been surprised to find him doing this. The complainant was not asked about the \$20 incident specifically but testified that she did not have any conversation with her mother about the money the appellant was trying to give her until after her disclosure to the police.
- [9] The trial judge stated that she did not accept the appellant's evidence about the money. When considered in the context of all the evidence it did not make sense, leading her to ask why he would attempt to mislead the court about why he gave the complainant money. She noted that this was not a peripheral issue – according to the complainant the money was tied to the assaults.
- [10] While this was a finding that the appellant had fabricated his evidence about the reason he gave the complainant money, we agree with the Crown that the fabrication finding was not used improperly, as asserted by the appellant. Rather, this was part of the trial judge's assessment of the appellant's credibility. The finding was followed in her reasons by the observation that the appellant's evidence about when he left for work was inconsistent and was an attempt to minimize his opportunity for contact with the complainant. At the end of this entire analysis, the trial judge concluded that she could not accept the appellant's evidence.
- [11] The trial judge went on to consider the evidence that she did accept – first as to when the complainant would arrive at the appellant's home in the morning and when the appellant would leave. On this basis, she concluded that the appellant had the opportunity to commit the assaults. Turning to the complainant's evidence, the trial judge concluded that the

inconsistencies raised by defence counsel did not undermine her evidence. The trial judge did not refer to or rely on the finding of fabrication in relation to the money the appellant had given the complainant as corroborating or supporting the complainant's evidence. Nor did she use that finding as circumstantial evidence of guilt. Instead, the trial judge used her fabrication finding in a similar way to the trial judges in *R. v. Z.V.*, 2025 ONCA 210, at paras. 26-27 and *R. v. H.P.*, 2025 ONCA 742, at para. 15.

- [12] The appellant's second argument is that the trial judge, although advertent to the framework for assessing the evidence outlined by the Supreme Court in *R. v. W.(D.)*, [1991] 1 SC.R. 742, erred by not expressly considering and rejecting his denial of having sexually assaulted the complainant. We disagree. The denial of the sexual assaults was the central point of the appellant's testimony. Whether he committed the offences was the issue at trial. When the reasons are read as a whole, there is no question that, in stating that she could not accept the appellant's evidence, the trial judge was rejecting his denial that he had committed the acts constituting the offences.
- [13] Finally, the appellant asserts that the trial judge misapprehended the evidence of the complainant's purported motive to lie: that the complainant made the allegations when she was angry with the appellant and had been personally antagonized by him, and in the broader context of what she perceived to be a history of abusive behaviour by the appellant to his wife, her godmother. The appellant points to the evidence that the complainant first disclosed the sexual assaults after the police had been called to the appellant's home by the couple's son during an argument between the appellant and his wife. The argument occurred in the presence of the complainant and, when she had attempted to intervene, the appellant had sworn at her. Near the end of her cross-examination, it was suggested to the complainant that she had lied to the police about the touching because she had resented him over the years and wanted to protect his wife. She admitted that she had stepped in during the argument to protect her godmother, but denied that she had lied to the police.
- [14] Contrary to the appellant's submissions, the trial judge clearly understood the evidence relevant to a potential motive to lie, and the defence argument with respect to the evidence. In various passages in her reasons she referred to the evidence about the complainant having witnessed arguments between the appellant and his wife about money, the appellant's rudeness to his wife and to the complainant during the altercation leading to the police being called, and the complainant having tried to defend her godmother because she did not like the way the appellant was speaking to her. And, in the course of the Crown's closing argument the trial judge articulated what she understood to be the defence position respecting the complainant's alleged motive to lie. She stated: "I don't understand the defence position to be this is a long and well thought out plan to somehow get at [the appellant]. I understood it to be this was a kind of heat of the moment, she's very angry at him, she doesn't like the way he's spoken to her, she doesn't - she doesn't like the way he's treating her godmother and she's, I don't know, somehow lashing out."

- [15] There is accordingly no merit to the appellant's assertion that the trial judge misapprehended the evidence going to the complainant's motive to lie. We agree with the Crown that the substance of the appellant's complaint on this ground of appeal is that the trial judge's reasons were insufficient because she did not specifically address and resolve the defence challenge to the complainant's evidence based on the alleged motive to lie. While acknowledging that the complainant's motive to lie was raised as an issue at trial, the Crown contends that this issue was not so material that the failure of the trial judge to address the issue would render her reasons insufficient.
- [16] We agree. A trial judge's reasons are to be read contextually and functionally, to determine whether they explain what the trial judge decided and why they decided that way in a manner that permits effective appellate review: *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at para. 69.
- [17] In this case, the thrust of the defence, in cross-examination of the complainant and in submissions, was a challenge to her credibility based on several alleged inconsistencies in her evidence. The trial judge concluded that the inconsistencies were minor, peripheral and understandable.
- [18] The duty of the trial judge was to explain why the appellant was convicted; she was not required to respond to every single argument of the defence: *R v. Dinardo*, 2008 SCC 24, [2008] 1 S.C.R. 788, at para. 30. In this case, on a contextual reading of the arguments and the reasons, it is apparent that the motive to fabricate that was alleged by the defence was considered by the trial judge, but it was not sufficient to raise a reasonable doubt with respect to the appellant's guilt.
- [19] For these reasons the appeal is dismissed. The sentence appeal is dismissed as abandoned. "K. van Rensburg J.A." "J. Copeland 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.
- [2] The appellant's notice of appeal also sought leave to appeal sentence. However, he made no submissions on the sentence appeal either in his factum or orally. In the circumstances we dismiss the sentence appeal as abandoned.
- [3] The sexual assault conviction was stayed pursuant to *Kienapple v. R.*, [1975] 1 S.C.R. 729.

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