

CANADA / JUDGMENT

R. v. S.F.

2026 ONCA 293

COURT

Court of Appeal for Ontario

DECIDED

23 April 2026

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R. v. S.F. Collection Decisions of the Court of Appeal Date 2026-04-23 Neutral citation 2026 ONCA 293 Docket numbers COA-24-CR-0607 Judges van Rensburg, Katherine; Gomery, Sally A.; Pomerance, Renee M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. S.F., 2026 ONCA 293[1] DATE: 20260423 DOCKET: COA-24-CR-0607 van Rensburg, Gomery and Pomerance JJ.A. BETWEEN His Majesty the King Respondent and S.F. Appellant Julie Santarossa, for the appellant Catherine Glaister, for the respondent Heard: April 7, 2026 On appeal from the convictions entered by Justice Scott G. Pratt of the Ontario Court of Justice, on February 1, 2024. REASONS FOR DECISION

- [1] The appellant was convicted of three counts of sexual assault. He received a suspended sentence with probation on the first count and a sentence of 18 months' imprisonment consecutive on each of the second and third counts. He appeals the convictions on the second and third counts.[2]
- [2] The complainant was the appellant's former romantic partner. She testified that, on two different dates, the complainant penetrated her vaginally without a condom, even though she had clearly communicated to him and he understood that she did not wish to have intercourse absent a condom. The appellant denied that he ever penetrated the complainant without a condom and maintained that she consented to all sexual activity.
- [3] The trial judge did not believe the appellant's testimony about the alleged incidents. He found that the appellant was unresponsive and evasive, and that he gave inconsistent, self-serving and sometimes implausible evidence. The trial judge also found that the appellant's infidelity during his relationship with the complainant was relevant to assessing whether he would disregard the complainant's rule about condom use: I have also considered the [appellant's] admitted infidelity. To be clear, I am not finding that because he was unfaithful to the Complainant, he is more likely to have committed these offences. I do not consider it as character evidence. Where I find it is relevant is in discerning his view of their relationship. After they agreed to be exclusive, and after they'd said "I love you" to each other, he took two trips with another woman. In my view, this shows a lack of respect for both the Complainant and their relationship. It shows he did not take their commitment or her feelings seriously. That is relevant to my determination of whether he would disregard

the Complainant's rule regarding condom use.

- [4] The appellant contends that this constitutes prohibited propensity reasoning. We agree.
- [5] Evidence of prior discreditable conduct cannot be used to prove that the accused generally has a bad character and is therefore more likely to have committed the offences for which they are being tried: *R. v. Handy*, 2002 SCC 56, [2002] 2 S.C.R. 908, at paras. 31. People are to be tried for what they did, not who they are.
- [6] Although the trial judge stated that he did not treat the appellant's infidelity as general evidence of bad character, we are of the view that his reasoning could only be seen as such. The appellant's disrespect for the complainant's feelings or the betrayal of her expectation of monogamy could not properly be used as evidence that the appellant was predisposed to disregard her rule about condom use and thus was more likely to have sexually assaulted her.
- [7] The appellant furthermore had no notice that his admission of infidelity might be used to assess his overall credibility and to find that he was more likely to have sexually assaulted the complainant.
- [8] The appellant's infidelity was first mentioned during the complainant's testimony, in the context of her explanation of why they broke up. The appellant also testified about the complainant's discovery of his infidelity and, in closing submissions, implied that it gave the complainant a motive to fabricate the sexual assault allegations. The appellant was not cross-examined about whether his cheating implied a general disregard for the complainant's wishes and expectations, and in particular her expectation that he would not penetrate her without a condom. The Crown did not suggest in its closing argument that the evidence could be used for this purpose nor did the trial judge ask the parties for submissions on this point.
- [9] Citing *R. v. Kruk*, 2024 SCC 7, 489 D.L.R. (4th) 385, at paras. 121-22, the Crown contends that it was open to the trial judge to find, based on the admitted infidelity, that the appellant was generally disinclined to respect the complainant's wishes. This argument mischaracterizes the Supreme Court's reasoning in the passage in *Kruk* relied on by the Crown. The Court found that a trial judge did not err in rejecting an accused's account of his interactions with a complainant on a specific evening because the account was inconsistent with the judge's other findings about what occurred that same evening. It did not endorse reasoning that, because an accused previously engaged in a morally reprehensible act, he had a greater propensity to commit an unrelated criminal offence months later.
- [10] Even if the Court's reasoning in *Kruk* could be interpreted as suggested by the Crown, the lack of opportunity given to the defence to make submissions on this point at trial would justify this court's intervention.

- [11] In light of our conclusions on these grounds, we do not need to consider the appellant's argument that the trial judge further erred by relying on myths and stereotypes in assessing his evidence.
- [12] The Crown argues that we should apply the curative proviso in s. 686(1)(b)(iii) of the Criminal Code, R.S.C. 1985, c. C-46, pointing out that the trial judge cited other reasons, aside from the appellant's admitted infidelity, for disbelieving his evidence. We disagree. We have no way of knowing how great a factor the admitted infidelity played in the trial judge's findings on the first and second steps of the W.(D.) analysis.[3] Moreover, given the absence of any notice that the evidence could be used for propensity reasoning, the trial was procedurally unfair.
- [13] As a result, the sexual assault convictions, for which the appellant was sentenced to three years in jail, cannot stand. The conviction appeal is granted. The convictions on the second and third counts are set aside and a new trial on these charges is ordered. The sentence appeal is dismissed as abandoned. "K. van Rensburg J.A." "S. Gomery J.A." "R. Pomerance 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] In his notice of appeal, the appellant also sought to appeal his sentence. He did not pursue a sentence appeal at the appeal hearing and it will be dismissed as abandoned.
- [3] R. v. W.(D.), [1991] 1 S.C.R. 742.

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