

CANADA / JUDGMENT

R. v. S.M.

2026 ONCA 336

COURT

Court of Appeal for Ontario

DECIDED

8 May 2026

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R. v. S.M. Collection Decisions of the Court of Appeal Date 2026-05-08 Neutral citation 2026 ONCA 336 Docket numbers COA-24-CR-0860 Judges Rouleau, Paul S.; Wilson, Darla A.; Madsen, Lene Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. S.M., 2026 ONCA 336[1] DATE: 20260508 DOCKET: COA-24-CR-0860 Rouleau, Wilson and Madsen JJ.A. BETWEEN His Majesty the King Respondent and S.M. Appellant Sarah Harvey, for the appellant Catherine Glaister, for the respondent Heard: April 27, 2026 On appeal from the convictions entered by Justice Michael J. Valente of the Superior Court of Justice, sitting with a jury, on January 24, 2024, and from the sentence imposed on August 2, 2024. REASONS FOR DECISION

- [1] The appellant was convicted by a jury of two counts of sexual interference contrary to s. 151 of the Criminal Code, R.S.C. 1985, c. C-46, against his two granddaughters, B.K. and M.K. He was sentenced to six years imprisonment. He appeals his convictions and has abandoned his sentence appeal.
- [2] After the hearing, we dismissed the appeal with reasons to follow. These are our reasons.

Analysis

- [3] The offences took place when the complainants were between seven and ten years old. The complainants testified that the appellant touched their breasts and made them touch or kiss his penis. M.K. also testified that the appellant repeatedly touched her genitals and kissed her on the mouth. The complainants were 14 and 16 years old when they testified at trial.
- [4] The appellant submits that the trial judge erred in his jury instructions on reasonable doubt in the context of his instruction on the assessment of the evidence of young witnesses. He argues that the jury charge should have included a “clarification” that the standard of proof beyond a reasonable doubt is not lower where evidence is given by young witnesses.
- [5] We do not accept this submission. The jury was properly and repeatedly instructed on the presumption of innocence and the applicable standard of proof. Nothing in the trial judge’s instruction on the assessment of the evidence of child witnesses in any way undermined or compromised the trial judge’s earlier instruction on the standard of proof. The jury could not have been confused about the correct standard of proof to be applied.

- [6] In his factum, the appellant submitted that the trial judge erred in granting the similar fact application by misstating the complainants' evidence and minimizing the evidence of inadvertent collusion. He appeared to largely abandon that submission in oral argument, instead asserting that while the similar fact application ruling was owed deference, the trial judge erred by failing to include a specific limiting instruction to the jury not to engage in propensity reasoning.
- [7] We reject both submissions. In the similar fact ruling, the judge fully explained why he found no evidence of advertent collusion but did find evidence of opportunity for inadvertent collusion or tainting, to the extent that the complainants discussed their respective allegations on at least one occasion. He then clearly explained why any opportunity for inadvertent collusion or tainting did not render the complainants' evidence either incredible or unreliable. There is simply no basis to find that in so doing he minimized that evidence. His decision is entitled to deference.
- [8] The jury was also properly and clearly instructed that they must treat each count separately, and that guilt on one count could not be used to find the appellant guilty on the second count. Furthermore, while not determinative, the language of the jury charge was specifically canvassed with trial counsel and no changes were sought.

Disposition

- [9] The conviction appeal is dismissed. The sentence appeal is dismissed as abandoned. "Paul Rouleau J.A." "D.A. Wilson J.A." "L. Madsen 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 26 October 2026 · Esheria