

CANADA / JUDGMENT

R. v. S.S.

2026 ONCA 303

COURT

Court of Appeal for Ontario

DECIDED

30 April 2026

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COA-24-CR-0712

Judges

Thorburn, Julie; Favreau, Lise G.; Madsen, Lene

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. S.S., 2026 ONCA 303[1]

DATE: 20260430

DOCKET: COA-24-CR-0712

Thorburn, Favreau and Madsen JJ.A.

BETWEEN

His Majesty the King

Respondent

and

S.S.

Appellant

Chris Sewrattan, for the appellant

Neville Golwalla, for the respondent

Heard: March 13, 2026

On appeal from the convictions entered by Justice Andrew Pinto of the Superior Court of Justice, on November 27, 2023.

Thorburn J.A.:

- [1] The appellant appeals his convictions for sexual interference, invitation to sexual touching, and making sexually explicit material available to a child. He advises that he has abandoned his sentence appeal.
- [2] The sole ground of appeal is that the trial judge's reasons were insufficient. The appellant argues that the trial judge failed to meaningfully engage with the evidence of the appellant's mother, K.S. In particular, he submits that the judge did not explain whether, or why, he accepted or rejected her evidence, or why that evidence failed to raise a reasonable doubt. The appellant says this omission amounts to legal error. He seeks a new trial.
- [3] The Crown submits that the trial judge was not required to set out his findings on each piece of evidence in arriving at a verdict. Moreover, the appellant's mother's evidence was of limited probative value because it was largely hearsay.
- [4] The appellant's second ground of appeal, that the trial judge found the appellant's evidence was fabricated although there was no independent evidence of fabrication, was abandoned in oral submissions.
- [5] For reasons that follow, I would dismiss the appeal.

Background Evidence

- [6] The appellant is the biological father of the complainant, B. The sexual abuse was said to have taken place between April 1, 2017, and April 30, 2020, when the complainant was between five and eight years old. The appellant and the complainant's mother were separated and the complainant spent weekends with the appellant.

- [7] In May 2020, the complainant told her mother that she had been sexually abused and no longer wanted to visit the appellant. In June 2020, she disclosed additional details to her mother and gave a formal statement to the police.
- [8] The complainant was eleven years old at the time of trial. She testified that the appellant forced her to rub his penis, put his penis in her mouth, licked her vagina, and exposed her to pornographic material.
- [9] In cross-examination, the complainant testified that while she was lying next to the appellant in bed, she saw him watch a video of “girls putting their mouths on male private parts” on his cellphone. She agreed that, on that occasion, she accidentally saw the video and looked at it for a few seconds. However, she said that on other occasions, the appellant chose to show her similar videos. She denied ever accidentally walking in on the appellant in the bathroom or knowing the password to his cellphone.
- [10] The complainant’s mother testified that prior to the complainant’s allegations, she had an amicable relationship with the appellant and the two co-parented the complainant without incident.
- [11] The appellant and his mother testified for the defence.
- [12] The appellant denied the allegations. He testified that the complainant “had a lying problem” and that she made up the allegations to spend more time with her mother. The appellant also claimed that the complainant’s knowledge of sexual acts stemmed from her walking into the bathroom while he was masturbating and accessing pornography on his cellphone without his permission.
- [13] The appellant’s mother lived in the same house. She testified that sometime between November 2019 and March 2020, the appellant told her that the complainant “saw me” which she understood to mean “his private parts”. She said the appellant was very embarrassed.
- [14] She also testified about another incident in April or May 2020 when she heard the appellant yelling and went downstairs to investigate. When she got downstairs, the appellant told her that the complainant was looking at pornography which was left open on his cellphone while he was in the shower. She said the appellant was frustrated because he had asked the complainant not to go on his cellphone without his permission.

The Trial Judge’s Decision

- [15] The trial judge reviewed the governing principles about how to approach the evidence of child witnesses, the analytical principles in *R. v. W.(D)*, [1991] 1 S.C.R. 742, and the law regarding motive to fabricate set out in *R. v. John*, 2017 ONCA 622, 350 C.C.C. (3d) 397.
- [16] The trial judge did not believe the appellant’s evidence and found his statements to police and his testimony to be inconsistent in material ways. He noted by way of example that:

- (a) When a police officer asked the appellant what he saw on the cellphone after he said the complainant had opened it while he was in the shower, he stated twice that he did not know as “I just shut it down quick. Boom.” At trial, however, the appellant testified that when he got out of the shower, the complainant made a surprised face so that he knew she had been on his cellphone. He asked her what she was doing, and she said, “nothing.” He checked his cellphone and saw that there were five to ten adult videos in his history which contained images of oral and vaginal sex; and
- (b) The appellant initially told police that when the complainant accidentally walked in on him masturbating, she came “storming in”. Later he said she was “sneaking in”. The trial judge held that the appellant’s inconsistent description “was more likely the result of him having invented the entire incident.”
- [17] Moreover, the trial judge held that the appellant’s evidence about the complainant accidentally seeing him masturbate in the bathroom was “virtually impossible” given the configuration of the bathroom.
- [18] He also rejected the appellant’s claim that the complainant had a “lying problem,” finding it to be exaggerated or invented. He noted that prior to the allegations, the parents had a cooperative relationship and the complainant was already spending more time with her mother, undermining the asserted motive to fabricate.
- [19] In his reasons, the trial judge described the evidence provided by the appellant’s mother. He also referred to the Crown’s submission that the evidence of the appellant’s mother “should be given little weight since [she] depended entirely on what she had been told by her son but he did not explicitly address the her evidence in his analysis.”
- [20] By contrast, the trial judge held that while the complainant’s evidence contained minor inconsistencies, her evidence was, “compelling, logical and detailed”. He held that it was “perfectly plausible” that she recounted further details a month after she first disclosed the abuse and noted that she never resiled from her core allegations.
- [21] The trial judge therefore rejected the appellant’s explanation that the complainant concocted her allegations and did so by relying on knowledge she got from the surreptitious use of his cellphone and seeing him masturbate. In any case, he believed the complainant and found there was no reason for her to make up these allegations to spend more time with her mother, as she was already doing so and her parents had a friendly parenting relationship.
- [22] He concluded:

I disbelieve [the appellant]’s testimony that he did not sexually abuse his own daughter. I am not left in reasonable doubt by [the appellant]’s evidence and, based on the evidence that I do accept, I am convinced beyond a reasonable doubt of [the appellant]’s guilt concerning the essential elements of the three offences involved.

Sufficiency of Reasons

- [23] Appellate review of reasons must be done “functionally” and “contextually”: *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at paras. 68-82. Credibility findings in particular, are entitled to significant deference: paras. 81, 89.
- [24] Contrary to the appellant’s submission, this case is not akin to this court’s decision in *R. v. Smith*, 2020 ONCA 782, at paras. 26-28.
- [25] In *Smith*, the appellant was convicted of sexual assault after he grabbed the complainant, a stranger, from behind while she was walking home at night. The trial judge failed to grapple with the appellant’s evidence that his intention was to surprise his girlfriend by hugging her from behind, and his girlfriend’s evidence that he engaged in a pattern of behaviour whereby he would hug her from behind when she was upset. This court concluded that the evidence of the appellant’s girlfriend “was capable of confirming the appellant’s evidence [about why he did what he did] and thus bolstering his credibility”, and the trial judge therefore erred by rejecting the defence evidence.
- [26] In this case, by contrast, the appellant’s mother’s evidence was neither material exculpatory evidence, nor was it capable of enhancing the credibility of the appellant’s testimony.
- [27] The appellant’s mother’s evidence was of limited probative value because it was largely hearsay. It consisted of what she had been told by the appellant. The appellant told her first about the fact that the complainant had seen him naked, and second, that the complainant had looked at pornography on his phone.
- [28] The only direct knowledge the appellant’s mother had about the first incident, was her observation that the appellant was embarrassed when he told her the complainant had walked in on him in the bathroom. She acknowledged in cross-examination, that she only concluded that the complainant had seen the appellant masturbating in the bathroom “[b]ecause of the charges”, meaning the sexual assault charges.
- [29] The only direct knowledge she had about the second incident, was that she heard the appellant shouting at the complainant for some reason. It was the appellant who told her that he was shouting because the complainant had been looking at pornography on his cellphone.
- [30] The appellant’s mother admitted that she had spoken about both incidents “somewhat” with the appellant before testifying.
- [31] Importantly, she had no direct knowledge of whether the complainant in fact saw the appellant masturbate or whether the complainant was looking at pornography on the appellant’s cellphone while he was in the shower.

- [32] Her evidence could not have assisted the defence in advancing its theory that the complainant (i) had a propensity to lie, (ii) a motive to lie to spend more time with her mother, and that (iii) she learned about the sexual behaviour by accident and not by virtue of anything the appellant had done to her. In short, as submitted by the Crown, her testimony should receive little weight as it could not have altered the verdict.
- [33] Given the trial judge's analysis of the appellant and complainant's evidence, his reasons for rejecting the appellant's evidence, and the little probative value of the appellant's mother's evidence, I am not persuaded that trial judge committed a reversible error by not explicitly addressing the evidence of the appellant's mother in his analysis. Even if her evidence were accepted, it was of little probative value and could not have given rise to a reasonable doubt.
- [34] For these reasons, I would dismiss the appeal.

Released: April 30, 2026 "J.A.T."

"Thorburn J.A."

"I agree. L. Favreau J.A."

"I agree. 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 25 October 2026 · Esheria