

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Nygard, 2026 ONCA 345¹

DATE: 20260515

DOCKET: COA-24-CR-0928

Huscroft, Pomerance and Osborne JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Peter Nygard

Appellant

Alan D. Gold, Ellen C. Williams and Gerri F. Wiebe, K.C., for the appellant

Jamie Klukach and Emily Marrocco, for the respondent

Heard: May 4, 2026

On appeal from the convictions entered by Justice Robert F. Goldstein of the Superior Court of Justice, sitting with a jury, on November 12, 2023, and from the sentence imposed on September 9, 2024.

REASONS FOR DECISION

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.

[1] The appellant was convicted by a jury of four counts of sexual assault in relation to four complainants, K.R., N.G., M.N., and K.H.² He was sentenced to a term of 11 years' imprisonment.

[2] He appeals his conviction on two bases. First, the appellant argues that expert evidence concerning the neurobiology of responses to traumatic events was admitted in error. Second, the appellant argues that the trial judge erred in permitting similar fact evidence to be used by the jury on a cross-count basis.

[3] The appellant also seeks leave to appeal sentence and brings a motion to admit fresh evidence.

[4] The appeal is dismissed for the reasons that follow.

Expert evidence was admitted in error, but the error is harmless

[5] There is no question that expert evidence from Dr. Lori Haskell was admitted in error. The trial judge followed in part the reasoning in *R. v. Hoggard*, 2021 ONSC 5365, in which Dr. Haskell's evidence was admitted in similar circumstances. However, this court held subsequently that Dr. Haskell's evidence was admitted in error in that case: *R. v. Hoggard*, 2024 ONCA 613, 173 O.R. (3d) 721. The only issue on this ground of appeal is whether the curative proviso – s. 686(1)(b)(iii) of

² He was acquitted of sexual assault in relation to R.M. and one count of unlawful confinement in relation to N.G.

the *Criminal Code*, R.S.C. 1985, c. C-46 – can be applied to uphold the appellant’s conviction despite the error, as occurred in *Hoggard*.

[6] The appellant does not contest the correctness of this court’s decision in *Hoggard*. However, he emphasises the high threshold that must be met in order to apply the proviso and argues that several differences between the circumstances of this case and *Hoggard* prevent the court from applying the proviso in this case. Specifically, he argues that the trial judge’s instructions in this case were not sufficiently robust.

[7] We do not agree. We accept the Crown’s position that the circumstances of this case are not materially different from *Hoggard*. As in *Hoggard*, the error in this case was harmless.

[8] The trial judge carefully instructed the jury concerning Dr. Haskell’s evidence and the uses to which it could not be put. He informed the jury that she had never met the complainants and knew nothing about their evidence, and that her evidence could not be used to diagnose the complainants’ behaviour or to conclude that their behaviour is consistent with having been sexually assaulted. He explained that there was no single way in which to respond to a sexual assault trauma, that Dr. Haskell’s evidence did not equip the jury to diagnose the complainants, and that there was no need to do so in order to decide the case.

[9] Further, the jury was informed that it is not possible to reason backwards from a stress reaction and conclude that it was caused by a traumatic event. The jury was reminded that it was for them to decide whether any offence had occurred, and was instructed as to the proper approach:

Do not to [sic] approach the evidence with unwarranted assumptions as to what is or is not sexual assault, what is or is not consent, what kind of person may or may not be the complainant of a sexual assault, what kind of person may or may not commit a sexual assault, or what a person who is being, or has been, sexually assaulted will or will not do or say. There is no typical victim or typical assailant or typical situation or typical reaction. My purpose in telling you this is not to support a particular conclusion but to caution you against reaching conclusions based on common misconceptions. You must approach the evidence with an open mind and without preconceived ideas. You must make your decision based solely on the evidence and in accordance with my instructions on the law.

[10] The trial judge's instructions are very similar to the instructions given in *Hoggard*. They are clear and comprehensive and address the relevant concerns. We note that counsel was satisfied with the instructions; no objection was raised to them. We do not accept that, having heard Dr. Haskell's evidence, the jury was not able to act in accordance with the trial judge's instructions or would not do so.

[11] It is noteworthy that, unlike in *Hoggard*, the jury in this case asked no questions concerning Dr. Haskell's evidence. And as in *Hoggard*, the jury in this case acquitted on a charge involving one of the complainants. Although the

circumstances of that complainant were in some ways different from those of the other complainants, nevertheless, the acquittal confirms that the jury did not misuse the impugned evidence.

[12] In sum, we are satisfied that the error in admitting Dr. Haskell's evidence was harmless and that this is a proper case for application of the proviso. This ground of appeal fails.

The trial judge did not err in permitting similar fact evidence to be used on a cross-count basis

[13] The appellant argues that the trial judge erred in finding that the evidence rose to the level required to suggest that the similarities were not coincidental, and in finding that the probative value of the purported similar fact evidence outweighed its prejudicial effect.

[14] We do not agree.

[15] It was open to the trial judge to find the requisite degree of similarity between the acts alleged was sufficient to dispel the probability of coincidence. The trial judge identified seven similarities between the evidence of the complainants, similarities that went to heart of the appellant's argument that the assaults had never occurred and that the complainants were lying. The evidence was plainly relevant to the complainants' credibility and supported their allegations that the *actus reus* of the offence had occurred. Absent an error in law or in principle, or a misapprehension of the evidence, a trial judge's conclusion as to the sufficiency of

the similarity is entitled to substantial deference: see e.g., *R. v. R.C.*, 2020 ONCA 159, at para. 63. We see no such error.

[16] The trial judge's decision that the probative value of the evidence outweighed its prejudicial effect is entitled to deference. The trial judge acknowledged that there were some important dissimilarities in the evidence, but it was open to him to conclude that the significant similarities he identified "tipped the balance" in favour of an instruction permitting cross-count use of the evidence. He mitigated the risk of improper reasoning based on clusters of similarities by instructing the jury to consider the similarities and dissimilarities between a given count and the counts they found likely occurred, and made clear that the jury could engage in similar fact reasoning only between counts that shared similarities.

[17] The trial judge reviewed similarities and dissimilarities identified by the parties to assist the jury in its task. Importantly, he reminded the jury that the appellant was not to be convicted on any count unless the jury was satisfied that the Crown had proven guilt on that count beyond a reasonable doubt. His approach was thorough and error free. We note that the appellant takes no issue with the trial judge's instructions to the jury, which carefully outlined the way in which the evidence could be used. Nothing more was required.

[18] This ground of appeal must be rejected.

There is no basis to interfere with the sentence imposed

[19] The appellant seeks to introduce fresh evidence, specifically, a detailed report from a specialist in geriatric medicine who examined the appellant subsequent to his sentencing. Although the evidence is relevant and reasonably capable of belief, we do not accept that it could reasonably be expected to have affected the result.

[20] The sentencing judge carefully considered extensive evidence concerning the state of the appellant's health at the time of sentencing and made a number of findings. He found that although the appellant's health had deteriorated, it was not possible to say whether or not this was simply the sort of deterioration that could be expected with age. The sentencing judge did not accept that the appellant had been subjected to harsh conditions of custody; on the contrary, he found that he had received special treatment. He found no compelling evidence that correctional authorities could not address the appellant's health concerns, including the need for temporary absences to receive health care – even early parole, if necessary, pursuant to s. 121(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, which provides that parole may be granted at any time to an offender on the basis of terminal illness, serious physical or mental health deterioration, or unforeseen excessive hardship.

[21] We see no error in the sentencing judge's approach and no basis to intervene. As the sentencing judge recognized, the appellant's age and condition

are relevant considerations, but they do not justify the imposition of a sentence disproportionate to the gravity of the offences. A sentence reduction would not be appropriate.

[22] Accordingly, the fresh evidence motion is dismissed. Leave to appeal sentence is granted, but the appeal is dismissed.

Disposition

[23] The appeal is dismissed.

“Grant Huscroft J.A.”
“R. Pomerance J.A.”
“P.J. Osborne J.A.”