

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. S.G., 2026 ONCA 391¹

DATE: 20260604

DOCKET: COA-23-CR-1210

Roberts, Monahan and Pomerance JJ.A.

BETWEEN

His Majesty the King

Respondent

and

S.G.

Appellant

S.G., acting in person

Jeffery Couse, appearing as duty counsel

Étienne Lacombe, for the respondent

Heard: June 1, 2026

On appeal from the convictions entered by Justice Paul T. O'Marra of the Ontario Court of Justice, on August 4, 2023.

REASONS FOR DECISION

[1] The appellant appeals his convictions on two counts of sexual assault and one count of criminal harassment against his former co-worker. With the able

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.

assistance of duty counsel, the appellant pursued one ground of appeal in oral submissions, namely: the trial judge erred by improperly relying on evidence of other, allegedly consensual sexual activity between the appellant and the complainant, which was not subject to a s. 276 application, to reject the appellant's evidence.

[2] At the conclusion of oral submissions, we advised that the appeal was dismissed with reasons to follow. These are our reasons.

[3] We were not persuaded that the trial judge made any reversible error.

[4] According to the appellant, the trial judge improperly relied on his evidence that about a month before the sexual assault offences for which he was convicted occurred, he had consensual sexual relations with the complainant ("the other sexual activity"). Further, he submits, the trial judge erred by misapprehending this evidence as it related to the timeline of when he met the complainant. He argues that the trial judge erred by relying on this inadmissible evidence to materially undermine his credibility.

[5] We disagree. The trial judge did not rely on the other sexual activity and held that it was not admissible. He stated that the only relevance of this evidence was to show an inconsistency in the appellant's evidence with respect to the timeline of meeting the complainant. As the trial judge stated: "[i]f, in fact there was another

intimate moment a month prior, it could not have occurred since [the appellant and the complainant] did not know each other at that time”.

[6] The trial judge’s use of the appellant’s inconsistency concerning when he met the complainant is entirely distinguishable from the prohibited use of the complainant’s disinterest in a sexual relationship in *R. v. Kinamore*, 2025 SCC 19, 503 D.L.R. (4th) 385, to undermine the appellant’s credibility in that case. First, unlike *Kinamore*, this is not a case in which the Crown introduced the evidence as part of its case against the accused. Here, it was the appellant himself who offered the evidence, unprompted, during cross-examination. Second, the trial judge’s use of the appellant’s inconsistency in the present case was divorced from and did not rely upon the sexual context and nature of the other sexual activity but focused only on the fact that it revealed an inconsistency with respect to the appellant’s purported timeline of his relationship with the complainant. As such, it did not impermissibly engage the twin myths or stereotypes, nor did it create any prejudice to the appellant, who spontaneously raised the other sexual activity in his evidence, or to the complainant or to the trial process: *Kinamore*, at paras. 28-30, 37.

[7] Nor do we agree that the trial judge misapprehended the evidence respecting the appellant’s timeline of meeting the complainant. The appellant’s evidence was internally inconsistent with respect to the various times when he said he met the complainant. The trial judge’s finding that the appellant and the

complainant would not have known each other when the other sexual activity allegedly occurred is supported by the record.

[8] The trial judge properly took into account the inconsistency that he was entitled to find in the appellant's evidence as to when he met the complainant. The sexual activity itself was irrelevant, but the fact of the inconsistency of the appellant's timeline was relevant to the trial judge's assessment of his credibility and reliability. There is no basis to intervene.

[9] The appeal was therefore dismissed.

[10] We are obliged to duty counsel for his very helpful submissions.

"L.B. Roberts J.A."
"P.J. Monahan J.A."
"R. Pomerance J.A."