

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. L.J., 2026 ONCA 414<sup>1</sup>

DATE: 20260610

DOCKET: COA-25-CR-0130

Copeland, Gomery and Osborne JJ.A.

BETWEEN

His Majesty the King

Respondent

and

L.J.

Appellant

Stephanie Brown, for the appellant

Eunwoo Lee, for the respondent

Heard: June 8, 2026

On appeal from the conviction entered by Justice Philip A. Downes of the Ontario Court of Justice, on June 13, 2024.

REASONS FOR DECISION

[1] The appellant appeals from his conviction for sexual assault in a judge-alone trial.

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<sup>1</sup> This appeal is subject to a publication ban pursuant to s. 486.5 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[2] After hearing submissions on behalf of the appellant, we did not call on the Crown to respond and dismissed the appeal with reasons to follow. These are our reasons.

[3] First, the appellant argues that the trial judge erred in preferring the evidence of Crown witnesses over the appellant's without considering exculpatory aspects of the evidence of some of the Crown witnesses, as required by the *W.(D.)* framework: *R. v. W.(D.)*, [1991] 1 S.C.R. 742.

[4] We see no merit in this ground of appeal. The trial judge specifically instructed himself on the Crown's burden of proof and its application to issues of credibility. Although he did not include a citation to *W.(D.)* in his reasons, he instructed himself on the application of the reasonable doubt standard to issues of credibility using *W.(D.)*'s three-step framework. The trial judge was clearly alive to the specific areas of evidence the appellant claims were not considered because he referred to them in his reasons, in particular in relation to his assessment of the complainant's credibility and reliability. The trial judge was not required to enumerate every piece of evidence he considered in every step of his reasoning.

[5] Second, the appellant argues that the trial judge erred by finding that the appellant fabricated evidence, in absence of independent evidence of fabrication. The appellant points to two areas of the trial judge's reasons where he found that

the appellant was “untruthful”. The appellant relies on this court’s decision in *R. v. Iqbal*, 2021 ONCA 416, 406 C.C.C. (3d) 208, at para. 58.

[6] The trial judge did not commit the error discussed in *Iqbal*. It is not an error for a trial judge to find that an accused lied or fabricated their evidence. The *Iqbal* line of cases concerns two improper lines of reasoning, which are based on an additional step after a finding of fabrication. First, it is an error to jump from a finding of fabrication directly to a conclusion of guilt. Second, it is an error to use a finding of fabrication as circumstantial evidence of guilt – as a makeweight – in the absence of independent evidence of fabrication. The risk from both of these errors is that they tend to reverse the burden of proof.

[7] The trial judge did not make the *Iqbal* error. He found that the appellant’s evidence was untruthful on two specific issues. However, the trial judge used the finding that the appellant had been untruthful on these two issues, in combination with other aspects of the evidence, only to reject the appellant’s account – to disbelieve him. He did not use the findings that the appellant had been untruthful as circumstantial evidence of guilt. The trial judge made no error: see *R. v. Z.V.*, 2025 ONCA 210, at paras. 26-27, and *R. v. H.P.*, 2025 ONCA 742, at para. 15.

[8] Third, the appellant argues that the trial judge erred in drawing a negative inference about the appellant’s credibility based on a non-existent breach of the

rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.). The appellant left this ground in writing, but did not abandon it.

[9] We do not agree that the trial judge erred. This issue relates to the appellant's evidence about the conversation he said took place with the complainant about consent. The trial judge's concern with the appellant's evidence about the wording of the conversation regarding consent was that the appellant embellished the conversation and added details when pressed in cross-examination, despite having been asked in examination-in-chief to describe the events leading up to the sexual contact step-by-step and in detail, including the words they spoke. Although the trial judge made passing reference to the fact that the specific words the appellant added to his account in cross-examination had not been put to the complainant during her cross-examination, the trial judge's primary concern was that the appellant added details to his account in cross-examination in a manner that the trial judge found was not credible. This finding was open to the trial judge and contains no error.

[10] In *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, the Supreme Court cautioned against finely parsing a trial judge's reasons in a search for error. We see no error in the trial judge's reasons in this case. He considered the evidence as a whole and carefully explained why he did not believe the appellant's evidence and was not left in a reasonable doubt by it. Significantly, the appellant's evidence was contradicted in two important areas by three witnesses besides the

complainant. The complainant's evidence was corroborated in significant areas by the same witnesses. The trial judge explained why he found the complainant's evidence, in the context of the corroborative evidence, persuaded him of the appellant's guilt beyond a reasonable doubt. There is no basis for appellate intervention.

[11] The appeal is dismissed.

"J. Copeland J.A."  
"S. Gomery J.A."  
"P.J. Osborne J.A."