

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. M.L., 2026 ONCA 147¹

DATE: 20260227

DOCKET: COA-24-CR-0354

Zarnett, George and Copeland JJ.A.

BETWEEN

His Majesty the King

Respondent

and

M.L.

Appellant

Sebastian Becker, for the appellant

Catherine Glaister, for the respondent

Heard: February 19, 2026

On appeal from the conviction entered by Justice Ivan S. Bloom of the Superior Court of Justice, sitting with a jury, on October 13, 2023.

REASONS FOR DECISION

[1] A jury found the appellant guilty of sexual assault.² He appeals his conviction on the basis that the trial judge provided insufficient guidance to the jury on how to

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.

² One count of administering a noxious substance with intent to endanger life was stayed before the Crown's closing addresses.

assess credibility in accordance with the burden of proof. At the conclusion of the appellant's submissions, we advised the parties that the appeal was dismissed and that our reasons would follow. These are our reasons.

[2] The complainant's evidence was that she met the appellant only a few days before the events in question. She and her toddler son needed a place to stay, and the appellant agreed to let them spend the night at his apartment.

[3] The complainant testified that while in the appellant's apartment he offered her candy, which she refused, but that he ultimately insisted she take it and forced a piece into her mouth. Shortly after ingesting the candy, the complainant's evidence is that she began to feel lightheaded and dizzy. After the appellant put additional pieces of candy into the complainant's mouth, she began to drift in and out of consciousness and had trouble hearing. She testified that the appellant then removed some of her clothing, kissed her body, and digitally penetrated her.

[4] The complainant, who said she was menstruating at the time, testified that she unsuccessfully attempted to get the appellant to stop. She was eventually able to leave the apartment with her son and call 911. During her examination-in-chief she testified that while in the ambulance she lost consciousness, that her heart stopped, and that paramedics had to press on her chest to restart it. However, when cross-examined she acknowledged that it only felt like her heart had stopped and that she had a panic attack.

[5] It was an agreed fact that from the swabs collected from the complainant for DNA testing, minor amounts of DNA from at least one male were found on a swab taken from her chest, but it was too small to be used for comparison. The swabs were taken from areas of the complainant's body that she alleged had come into contact with the appellant. The nurse who administered the sexual assault evidence kit testified that while the complainant's menstrual blood flow was of a "moderate amount", she did not observe any fresh or dried blood on her body or clothing.

[6] A toxicology report that analyzed the complainant's blood and urine samples detected carboxy-THC, a metabolite of THC, in both samples and traces of THC in her blood sample. A toxicology expert from the Centre for Forensic Science testified that the onset of effects from THC usually appear 30 to 60 minutes after ingestion, if taken orally, although an empty stomach may reduce that time by five to ten minutes. The expert further testified that the effects from THC generally last up to eight hours or more after first ingestion.

[7] One of the paramedics with the complainant when she was transported to the hospital testified that he observed an elevated heart rate but no signs of cardiac arrest, that he did not perform chest compressions on the complainant, and that she was "alert and responsive and able to answer ... questions appropriately."

[8] The appellant did not testify.

[9] The appellant submits that there were several key inconsistencies between the complainant's testimony and four categories of evidence: the presence of the complainant's menstrual blood, the timing of the effects of THC, the DNA analysis, and her condition in the ambulance. He argues that the trial judge failed to "relate the principle of reasonable doubt" to this evidence.

[10] We are unpersuaded by the appellant's submissions. It was undisputed that no menstrual blood was observed on the complainant's body or on her clothing during the sexual assault examination, which did not make it either more or less likely that a sexual assault occurred. Therefore, while it was open to the jury to use this evidence to assess the complainant's credibility, it was not a vital issue that required a *W.(D.)*³ instruction.

[11] The timing of when the complainant began to first feel the effects of THC was also not a vital issue. The toxicologist's credibility was not in issue; her evidence did not conflict with any other evidence on an essential element of the offence; and it was not, on its own, evidence that could give rise to a reasonable doubt. While the jury was tasked with deciding whether the Crown had proven each essential element of sexual assault beyond a reasonable doubt, this does not mean they had to decide whether the Crown had proven individual pieces of

³ [1991] 1 S.C.R. 742

evidence beyond a reasonable doubt, which would be the effect of accepting the appellant's position.

[12] With respect to the lack of DNA evidence, this was not a matter of controversy at trial. The parties agreed that minor amounts of male DNA were found during DNA testing, which were not suitable for comparison. It therefore cannot be said that this was a vital issue.

[13] Lastly, the apparent contradiction between the complainant's evidence about her condition in the ambulance and the paramedics' evidence did not require a *W.(D.)* instruction. The trial judge made it clear to the jury that they had to consider all of the evidence and that the Crown had the burden of proving the essential elements of the offence beyond a reasonable doubt.

[14] The purpose of a *W.(D.)* instruction is to ensure that jurors understand the relationship between findings of credibility in the context of conflicting evidence on a vital issue and the Crown's burden of proof. The trial judge's final instructions achieve this by conveying to the jury that when there is conflicting evidence, the question is whether they are left with a reasonable doubt about the accused's guilt on the whole of the evidence.

[15] In our view, the jury would have well understood the "appropriate burden and standard of proof": *R. v. Barrett*, 2016 ONCA 12, 346 O.A.C. 1, at paras. 13-

14; see also *R. v. C.L.Y.*, 2008 SCC 2, [2008] 1 S.C.R. 5, at para. 6; *R. v. Morin*, [1988] 2 S.C.R. 345, at pp. 361-62. There is no basis for appellate intervention.

[16] For these reasons, the appeal is dismissed.

“B. Zarnett J.A.”

“J. George J.A.”

“J. Copeland J.A.”