

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. R.G., 2026 ONCA 148¹

DATE: 20260302

DOCKET: C69904

van Rensburg, Thorburn and Gomery JJ.A.

BETWEEN

His Majesty the King

Respondent

and

R.G.

Appellant

R.G., acting in person

Carter Martell, appearing as duty counsel

Jacob Millns, for the respondent

Heard: February 3, 2026

On appeal from the convictions entered by Justice Tory Colvin of the Ontario Court of Justice, on July 16, 2021.

Thorburn J.A.:

¹ This appeal is subject to a publication ban pursuant to 486.4 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[1] The appellant, R.G., was convicted of two counts of sexual assault and sentenced to two years imprisonment². He has served his sentence and appeals his conviction only.

[2] While his Notice of Appeal cites other grounds, including a s. 11(b) ground of appeal, R.G. confirmed at the hearing that he raises three grounds of appeal and does not intend to pursue the s. 11(b) claim.

[3] First, he claims that his ss. 10(a) and (b) *Charter* rights were violated. The relevant portion of section 10 provides that:

Everyone has the right on arrest or detention

a) to be informed promptly of the reasons therefor;

b) to retain and instruct counsel without delay and to be informed of that right[.]

[4] R.G. claims that he was not informed of the reason for his arrest and was therefore not able to receive informed legal advice before giving his statement to police.

[5] Second, he claims that his trial counsel should have identified the s. 10 issue and provided him with advice, and the failure to do so amounts to ineffective assistance of counsel.

² The appellant was also convicted of one count of failing to keep the peace as he was required to do as a result of a common law peace bond, which was in force on the date of the offences.

[6] Third, he claims the trial judge erred in applying the analysis in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. The *W.(D.)* analysis provides that in a case where credibility is important and contested:

- (a) If the trier of fact believes the accused's evidence, they must acquit;
- (b) If the trier of fact does not believe accused's evidence but it leaves them with a reasonable doubt, they must acquit; and
- (c) Even if the trier of fact is not left in reasonable doubt by the accused's evidence, the trier must ask whether based on the evidence which they do accept, they are satisfied beyond a reasonable doubt of the accused's guilt.

[7] R.G. claims that credibility was a central issue and that the trial judge did not properly assess the evidence as he should have, according to the *W.(D.)* principles.

The First Ground of Appeal: Section 10 of the *Charter*

[8] In his affidavit filed on this appeal, R.G. claimed for the first time that at the time of his arrest, the arresting officer "did not tell me what I was accused of doing" until after he had spoken to duty counsel such that duty counsel was unable to give him any meaningful advice before he gave his police statement.

[9] Duty counsel assisting R.G. with this appeal acknowledges, however, that, contrary to R.G.'s account, he was advised by the arresting officer that he was charged with two counts of sexual assault, and the evidence suggests he was advised of his right to remain silent. He then chose to speak with duty counsel. Thereafter, when questioned about the details of these offences, he told another

officer that no sexual encounter occurred on the evening in question and police would not find his DNA on the complainant.

[10] At trial, R.G.'s statement was admitted as voluntary.

[11] During the appeal hearing, R.G. revised his position to claim that the arresting officer did not give him "meaningful information" about the reasons for his arrest such as the time and place of the alleged assault or the name of the complainant, and duty counsel was therefore unable to properly advise him of his rights before he gave his police statement.

[12] Section 10 of the *Charter* requires a detainee to be advised promptly of the reasons for detention and the right to counsel. Section 10(a) has two purposes. First, it protects individual liberty by guaranteeing that "one is not obliged to submit to an arrest [or detention] if one does not know the reasons for it". Second, it safeguards the right to counsel because "[an] individual can only exercise his s. 10(b) right in a meaningful way if he knows the extent of his jeopardy": *R. v. McGowan-Morris*, 2025 ONCA 349, 177 O.R. (3d) 81, at para. 36; see also *R. v. Evans*, [1991] 1 S.C.R. 869, at pp. 886-87; and *R. v. Black*, [1989] 2 S.C.R. 138, at pp. 152-53.

[13] For these reasons, when police detain an individual, at a minimum, they must advise the detainee "in clear and simple language, the reasons for the detention" so that the person generally understands the jeopardy in which the

person finds themselves and can make an informed decision about whether to speak to a lawyer: *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59, at para. 21; see also *R. v. Latimer*, [1997] 1 S.C.R. 217, at para. 28, citing *R. v. Smith*, [1991] 1 S.C.R. 714, at p. 728.

[14] Police must explain what they are investigating, but not how they intend to investigate the matter and the steps they might take: *McGowan-Morris*, at para. 40. The “total situation as it affects the understanding of the accused” will be examined in deciding whether the person’s s. 10 *Charter* right was infringed: *Smith*, at p. 729. See also *R. v. Roberts*, 2018 ONCA 411, 360 C.C.C. (3d) 444, at para. 78, and *Evans* at pp. 868-888.

[15] As stated in *Smith*, at p. 323: “The degree of awareness which the accused may be reasonably assumed to possess in all the circumstances may play a role in determining whether what the police said was sufficient to bring home to him the extent of his jeopardy and the consequences of declining his right to counsel.”

[16] In *R. v. Eakin*, (2000) 132 O.A.C. 164, at paras. 10-11, this court found that the appellant’s s. 10 *Charter* right was not infringed when he was informed that he was under arrest for sexual assault and his right to counsel, was not given further details of the offence, and did not choose to speak to counsel.

[17] The question is whether R.G. generally understood the jeopardy he faced, not whether he was made aware of all the factual details: *Smith*, at p. 728; *R. v. W.L.*, 2016 ONSC 5141, 364 C.R.R. (2d) 107, at paras. 56-58.

[18] R.G. was told he was being arrested on two charges of sexual assault. He was arrested only two and a half weeks after the alleged sexual assaults such that the allegations were not dated. R.G. then spoke with duty counsel to receive legal advice regarding two charges of sexual assault before giving his police statement to another officer.

[19] While R.G. did not know the details respecting the two charges of sexual assault, he knew he was charged with sexual assault, he would have known they were serious charges, and he was able to speak to a lawyer to advise him about the sexual assault charges. I therefore see no error in the trial judge's conclusion that R.G. knew enough to know the extent of the jeopardy he faced and receive legal advice before making his statement to police.

[20] As such, in my view, there was no s. 10 *Charter* breach and I would dismiss this ground of appeal.

The Second Ground of Appeal: Ineffective Assistance of Counsel

[21] R.G. claims that his trial counsel did not alert him to any *Charter* issues and this amounted to ineffective assistance of counsel. In her affidavit submitted on

appeal, trial counsel stated that she turned her mind to possible *Charter* issues when she reviewed the file but did not see any potential *Charter* violations.

[22] An appellant who advances an ineffective assistance of counsel claim must show three things. First, the appellant must establish the facts material to the claim of ineffective assistance on the balance of probabilities. Second, the appellant must demonstrate trial counsel's representation was ineffective because it fell below what is reasonably expected of trial counsel in all the circumstances. Third, the appellant must show the ineffective representation resulted in a miscarriage of justice, either by rendering the trial unfair or the verdict unreliable: *R. v. Kuang*, 2026 ONCA 72, at para. 22; *R. v. M.Z.*, 2026 ONCA 4, at para. 15; *R. v. Zock*, 2025 ONCA 483, 450 C.C.C. (3d) 459, at para. 4; *R. v. Fiorilli*, 2021 ONCA 461, 156 O.R. (3d) 582, at para. 48; and *R. v. K.K.M.*, 2020 ONCA 736, at para. 55.

[23] In this case, R.G. has advanced little or no evidence as to what the arresting officer said, what counsel told him, and what he understood about the police conduct. He has therefore failed to put forward the necessary evidence to make out a claim of ineffective assistance of counsel on a balance of probabilities: see e.g. *R. v. L.O.*, 2015 ONCA 394, 338 O.A.C. 123, at para. 25.

[24] I would therefore dismiss this ground of appeal.

The Third Ground of Appeal: The Trial Judge's Application of the *W.(D.)* Analysis

[25] R.G. claims the trial judge erred in his application of the *W.(D.)* analysis in weighing the evidence.

A. The Trial Judge's Assessment of R.G.'s Evidence

[26] The trial judge found that R.G. was not a credible witness.

[27] R.G. admitted that he lied several times to the police and to his spouse about his interactions with the complainant.

[28] At the time of his sexual encounters with the complainant, R.G. had been married for only three months. After meeting the complainant on Facebook, they had several online exchanges. R.G.'s wife discovered the exchanges between them and blocked the complainant on his social media sites.

[29] R.G. promised his wife he would not communicate with the complainant again. This was a lie.

[30] Instead of stopping his communication with the complainant, he wrote to her to apologize for blocking her. He asked her to meet up and picked her up in a parking lot and they had further conversation in his vehicle. He decided on the next day, his birthday, to go out with the complainant contrary to his promise to his wife to have nothing further to do with the complainant.

[31] In his police statement, R.G. denied he had sexual contact with the complainant and he said the police would not find his DNA on her.

[32] R.G.'s DNA was found on the complainant. At trial, he admitted that he lied to the police in his interview when he denied any sexual contact with her. He said he did so because he wanted to protect his marriage and family, and he felt guilty about what had happened.

[33] He admitted the sexual encounters with the complainant but said they were consensual. He testified that on the night in question, he had been drinking but the complainant was fine. He said she led him to the washroom, pulled down his trousers, performed oral sex on him, pulled down her own trousers, bent over the bathtub and they had vaginal sex for two to three minutes. He said that some time later, they returned to the washroom and she again pulled him to her, took his and her trousers off and they had sex. He denied that he put her leg on the sink at any point.

[34] Contrary to the complainant's testimony, R.G. denied calling her after these encounters. However, at trial when he was shown the extraction report call log, which confirmed that he had called her, R.G. said he must have pocket dialed.

[35] In assessing the evidence in accordance with *W.(D.)*, the trial judge noted the lies R.G. told to his wife, and found he was "even more deceitful with the police". The trial judge noted that R.G. gave a voluntary statement to police after

being told there would be DNA testing done yet remained firm that there was no physical contact between himself and the complainant beyond bumping. The DNA evidence showed that he had sexual intercourse with the complainant. Moreover, the complainant's leg injury was confirmed by the photograph of the injury taken while the complainant was in hospital.

[36] The trial judge therefore concluded that he did not believe R.G. and his evidence did not leave him with a reasonable doubt as to his guilt. There was ample evidence to support this.

B. The Trial Judge's Assessment of the Complainant's Evidence

[37] The trial judge found the complainant, by contrast, to be a strong witness: clear, forthright, unshaken in cross-examination, and he found her version of events was coherent.

[38] She testified that after online exchanges and one meeting, R.G. invited her to meet at a gathering with his friends. She accepted. The complainant said she was "tipsy". When she went to the washroom, she said R.G. followed her and while she was urinating, he grabbed her by the arms, put her face down over the sink, held her trousers down, and pushed her leg onto the sink. The complainant said R.G. then pushed his penis into her vagina and she asked him what he was doing. He answered that she was attracted to him, that she wanted it, and that she was

drunk anyway. She testified that she went limp. R.G. then put her on the floor, put his penis in her mouth, ejaculated, and told her to swallow.

[39] After she cleaned herself up, the complainant went back to the living room and sat on the couch. The complainant said she went back to the washroom a half hour later, and R.G. again followed her and pinned her down, pulled her trousers down and told her to “just take it”. She told him to stop. He told her to enjoy it. She was crying and she said he could see this in the mirror. He stopped and left the washroom.

[40] The complainant then attempted to leave. She did not have money for a taxi and tried calling several numbers for help. She said she called R.G. three times by mistake. The calls were one to three seconds long.

[41] She eventually called a friend and told him she was “raped”. Two friends came to meet her and at their suggestion, she called 9-1-1. She was taken to hospital and the sex assault kit was used. The results matched R.G.’s DNA sample. Hospital staff took a picture of her leg injury.

[42] The trial judge found the complainant’s evidence was reliable and credible and that any discrepancies in her evidence were on minor points. He also noted that the picture of her leg taken while in hospital, showed marks consistent with her account of R.G. pushing her leg onto the sink causing her injury.

[43] He therefore accepted her evidence as to the source of her leg injury, which supported her version of events in the bathroom. The three pocket dials after she left and their duration also confirmed her evidence.

[44] There was ample evidence to support the trial judge's finding that the complainant was a credible witness.

C. The Trial Judge's Conclusion that R.G. was Guilty

[45] Credibility was a central issue in this case and, as noted above, there was ample evidence to support the trial judge's findings that R.G. was not a credible witness and that the complainant, by contrast, was a credible witness. Moreover, there was evidence to corroborate the complainant's version of events including the photo of her leg injury, the DNA evidence, and the telephone logs.

[46] Therefore, on the evidence as a whole, I find there was sufficient evidence to support the trial judge's conclusion that he was satisfied beyond a reasonable doubt of R.G.'s guilt on the charges of sexual assault.

[47] I see no error in the trial judge's application of the *W.(D.)* analysis, his decision was reasonable and I would therefore dismiss this ground of appeal.

Conclusion

[48] For the above reasons, I would dismiss this appeal of conviction.

Released: March 2, 2026 "K.M.v.R."

"Thorburn J.A."

"I agree. K. van Rensburg J.A."

"I agree. S. Gomery J.A."