Citation: R v Bruce, 2026 MBCA 87
Date: 20261021

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Jennifer A. Pfuetzner
Madam Justice Lori T. Spivak
Mr. Justice David J. Kroft

B E T W E E N:

	)	***M. P. Cook*** *and*
	)	***E. J. Roitenberg, K.C.***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***R. Lagimodière*** *and*
	)	***K. N. Stashko***
- and -	)	*for the Respondent*
	)	
MICHAEL EDWARD BRUCE	)	*Appeal heard and*
	)	*Decision pronounced:*
(Accused) Appellant	)	***October 7, 2026***
	)	
	)	*Written reasons:*
	)	***October 21, 2026***

NOTICE OF RESTRICTION ON PUBLICATION: No one may publish, broadcast or transmit any information that could disclose the identity of the victim or a witness (see *Criminal Code*, RSC 1985, c C-46, s 486.4).

On appeal from *R v Bruce*, 2024 MBKB 104

KROFT JA (for the Court):

[1] The accused was convicted of eleven sexual offences involving three victims: K.C. (aged thirteen; counts 1-6), R.S. (aged thirteen; counts 8-11), and V.S. (aged nineteen; count 12). Count 7 was stayed by the Crown

and the convictions on counts 3 and 10 were judicially stayed pursuant to *Kienapple v R*, 1974 CanLII 14 (SCC). The accused appealed his convictions.

[2] The charges were laid following separate investigations respecting each victim's complaints. Prior to trial, the accused moved to sever the counts and requested a separate trial for each victim (the severance motion). The severance motion was denied by the motion judge and all charges proceeded to trial together before the trial judge. At trial, the accused advanced a mistake of age defence in respect of K.C. and R.S., and a consent defence in respect of V.S. The Crown's motion to admit similar fact evidence was granted at trial and was not challenged by the accused on appeal.

[3] Common to the victims is the fact that, among other things, they were put in contact with the accused through, and while socializing at, the residence of the same individual (M.S.), who knew the accused well and had been in a relationship with him in the past; they engaged with the accused for the purpose of receiving some reward such as money, alcohol or a ride home; they were picked up at M.S.' residence and ultimately dropped off by the accused in a grey/silver truck; and each of the incidents occurred close in time and, in the case of R.S. and V.S., on the same evening, such that they were present at M.S.' residence at the same time and testified to that effect.

[4] On appeal, the accused argued:

i) The motion judge erred by denying the severance motion.

ii) The trial judge erred by concluding the accused failed to take all reasonable steps to determine the ages of K.C. and R.S.

iii) The trial judge erred by scrutinizing the evidence of the accused and the Crown unevenly.

Denial of the Severance Motion

[5] Section 591(3) of the *Criminal Code*, RSC 1985, c C-46 permits severance when it is in the interests of justice to do so. A judge's decision regarding severance is entitled to deference provided they acted judicially and the ruling does not result in an injustice (see *R v JMB*, 2019 MBCA 14 at para 21; *R v Laporte (PLR)*, 2016 MBCA 36 at para 104, citing *R v Last*, 2009 SCC 45 at paras 14, 21 [*Last*]).

[6] The accused submitted the motion judge did not act judicially, focusing particularly on how he considered the legal and factual nexus, the accused's intention to testify, the potential for inconsistent findings, and the implications of witnesses having to testify at more than one trial. In our opinion, a fair reading of the motion judge's reasons in light of the severance motion record does not support the accused's submissions.

[7] The motion judge correctly identified *Last* as a leading authority on severance and, in a holistic manner, took into account the non-exhaustive list of considerations identified therein (see *R v Bruce*, 2024 MBKB 36 at para 3, citing *Last* at para 18). In his reasons and based on the record before him at the time, the motion judge weighed, among other things, the numerous commonalities already mentioned in paragraph 3 hereof; the youthfulness and vulnerability of the victims; the extraction evidence obtained from the accused's electronic devices that referenced all of the victims; commonalities in the statements made by the accused to each victim; the reasonable prospect that the Crown's proposed similar fact motion would succeed; the impact of

the severance motion on the accused's choice to testify; uncertainty of the accused about his intentions to testify at trial; the risk of witnesses, including the victims, having to testify multiple times; and the risk of inconsistent rulings in regard to the phone extraction evidence. In our view, the motion judge balanced these factors in a reasonable way and we are not persuaded that he failed to act judicially.

[8] The accused also submitted the denial of the severance motion resulted in an injustice to him. In particular, the accused acknowledged he had to take the stand to establish his mistake of age defence to the charges relating to K.C. and R.S., but asserted that might not have been the case had there been a separate trial for V.S. In other words, the accused said that in respect of V.S., he was denied an opportunity to choose not to testify. He also argued, more generally, that evidence that otherwise would not be before the court was considered or at least tainted other evidence across counts.

[9] In our opinion, the accused did not establish an injustice occurred. The accused's defence to the charge that he sexually assaulted V.S. was consent. Considering the Crown's evidence, it is difficult to imagine a scenario where the accused would not have testified to counter that evidence even if there had been a separate trial.

[10] More generally, the accused has not appealed the trial judge's order permitting the Crown to adduce similar fact evidence. It is clear from the trial judge's thorough reasons that she was alert to all the evidence before her and the proper use to make of it.

[11] At the end of the day, we are satisfied that the motion judge acted judicially and that the ruling did not result in an injustice. Deference is owed to his decision to deny the severance motion.

Trial Judge's Assessment of the Evidence

[12] We address the final two grounds of appeal together because, in our opinion, at their core, they are asking this Court to revisit clear factual and credibility findings made by the trial judge. Categorized in this manner, deference is owed to the trial judge's findings and it is incumbent on the accused to establish, on the record, a palpable and overriding error (see *R v Kruk*, 2024 SCC 7 at para 82).

[13] He has not done so.

[14] As previously mentioned, the trial judge's reasons were thorough. They carefully set out the onus to be met by the Crown, the elements of each offence, the relevant evidence, her findings of fact and credibility, and her application of the law to the facts as found. She explained why she did not believe the accused. She comprehensively reviewed the law regarding the mistake of age defence in relation to sexual offences. Noting that the accused took no steps to ascertain R.S.' age and minimal steps regarding K.C., she understandably found that the accused was reckless as to their age or, alternatively, failed to take all reasonable steps in the circumstances. Her findings regarding the inadequacy of the steps taken by the accused to ascertain the ages of K.C. and R.S. were reasonably available to her based on the evidentiary record and her credibility assessment of the witnesses, including the accused. Importantly, the path to her findings is apparent from

her reasons. The same is true of the findings regarding V.S. Deference is owed.

[15] We note that the accused framed these grounds of appeal as the trial judge having reached an unreasonable verdict and having engaged in uneven scrutiny of the Crown's evidence compared to the accused's evidence. In terms of unreasonable verdict, it cannot be said that the verdict was one a trier of fact, acting judicially, could not reasonably have rendered (see *R v CPR*, 2024 MBCA 22 at paras 11-12). As for uneven scrutiny of the evidence, the high standard of review set out in *R v Buboire*, 2024 MBCA 7 at para 13 has not been met.

Disposition

[16] For the foregoing reasons, we dismissed the appeal.

Kroft JA

Pfuetzner JA

Spivak JA