IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Karen I. Simonsen
Mr. Justice James G. Edmond
Mr. Justice David J. Kroft

B E T W E E N :	)
	)
HIS MAJESTY THE KING	) **O. Plotnik**
	) *for the Appellant*
Respondent	) X. Ji
	)
- and -	)
	) **A. B. Munce**
XIAOHUI JI	) *for the Appellant*
	) G. Zhang
(Accused) Appellant	)
	)
- and -	) **A. Y. Kotler**
	) *for the Respondent*
B E T W E E N :	)
	)
HIS MAJESTY THE KING	) *Appeals heard and*
	) *Decision pronounced:*
	) **September 12, 2025**
Respondent	)
	)
- and -	) *Written reasons:*
	) **September 25, 2025**
GUOFENG ZHANG	)
	)
(Accused) Appellant	)

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).

SIMONSEN JA (for the Court):

[1]   The accused, Xiaohui Ji (Ji) and Guofeng Zhang (Zhang), appealed their convictions for extortion, criminal harassment and attempted abduction. The offences arose from a course of conduct undertaken by the accused in an effort to compel repayment of money they felt they were owed.

[2]   The accused appealed on the ground that the trial judge erred by failing to properly consider, under the third prong of her *W(D)* analysis (see *R v W(D)*, [1991] 1 SCR 742, 1991 CanLII 93 (SCC)), evidence of collusion amongst the Crown witnesses when assessing their credibility and reliability. Ji also appealed on the related ground that the trial judge's reasons, particularly on the issue of collusion, were not sufficient to permit meaningful appellate review.

[3]   At the hearing, we dismissed the appeals with reasons to follow. These are those reasons.

The Trial

[4]   At trial, the Crown called as witnesses the members of the family who were the subjects of the crimes, namely a husband (the husband) and wife (the wife) and their three children—a boy aged thirteen (R) and two girls aged ten (J) and nine (A) at the time of the offences. All of the children are collectively hereinafter referred to as "the children". The Crown also called a friend (the friend) of the wife. Both accused testified.

[5]   The accused emigrated from China to Canada in 2017, hoping to obtain permanent residency. In the fall of 2018, they started working at a

Chinese restaurant (the restaurant) that was owned by the husband and the wife. As a consequence, the accused came to know the children. Both accused ceased working at the restaurant in 2019, with them testifying that conditions of their employment were entirely unsatisfactory.

[6]   Between the fall of 2018 and the spring of 2019, both accused transferred significant sums of money to the wife. The wife testified that these payments were investments in a retail supermarket business that failed. The accused, on the other hand, testified that the payments were deposits that the wife required to keep them employed and that the money was to be returned after their immigration status was secured.

[7]   The trial judge found that, however the payments were characterized, they gave rise to a financial dispute. The trial judge also found that the accused conceived a multi-step plan to get the money back.

[8]   The first step was to approach the husband and the wife in April 2021 at the restaurant. According to the wife, Ji told her that it was time to pay the money back, failing which he would take further action. He said that he was representing himself, Zhang and another employee. Ji testified that he demanded repayment "by Sunday", failing which he had "some other plans." The wife became very agitated, and Ji concluded that there would be no return of the money.

[9]   The trial judge found that the accused then went to the second step of the plan, going to the friend's restaurant in early May 2021 to try to enlist her assistance. According to the friend, Zhang asked for her help in relation to a financial issue he had with the wife, saying: "I don't want to make this thing big. I don't want to bring to the internet, bring to the kids' school, bring

to the China where [the wife's] parents lived." The friend declined to assist and testified that, out of concern for the children's safety, she warned the wife. The wife testified that, as a result, she told the children not to go with these men if they saw them. Zhang's testimony was that, at this meeting with the friend, he told her that, in an effort to be repaid, he would have to approach other people, expose the wife's behaviour on social media and websites, and, as a last resort, take legal action. The trial judge found that he attempted to minimize what had been said.

[10]   Finally, the trial judge determined that, a few days later when nothing had come of the meeting with the friend, the accused decided to move on to the third step of the plan, which involved the children. The trial judge accepted the testimony of J and A and determined that Ji attended their school and approached them, indicating that their mother had asked him to pick them up. According to J, Ji grabbed her arm and said: "Let's go". The girls' father then arrived to pick them up and testified that he saw Ji grabbing J's arm. The girls went to their father's car and Ji walked away.

[11]   Ji admitted to being at the school but denied telling J and A he was there to pick them up and denied pulling J's arm. He said that, in Chinese culture, people with authority can help resolve money conflicts, and that he attended at the school to get the children's teacher's name so that the teacher could help with the financial issue.

[12]   At about the same time, Zhang attended a different school, where R was a student. The trial judge accepted R's evidence and found that, as R and a friend were leaving the school, Zhang approached R and told him that his mother had requested that he pick him up. R made up a story that he had piano

lessons and was going to confirm with his teacher; he did this so he could walk away and make a phone call to his mother. His mother told him to take photographs of the man, which R did. R then walked a couple of blocks, at which point his father pulled up and they drove home.

[13]   While Zhang's evidence was generally consistent with R's, he denied telling R that he was there to pick him up. Like Ji, he said that he had gone to the school to get the name of R's teacher. Again, the trial judge concluded that Zhang had minimized his actions.

[14]   During final addresses, defence counsel strenuously argued intentional collusion amongst the family members, including an accusation that the wife had masterminded the collusion in an attempt to hide her involvement in a "crooked" immigration scheme. Collusion, in particular, influence by the parents over the children, was the central basis upon which the evidence of the children was challenged.

[15]   In all, the trial judge found the accused's explanations to be "far-fetched and completely unbelievable" and that the level of planning involved and the way they carried out their plan did not support their testimony. She accepted the evidence of the Crown's witnesses and found that the accused's "intent was to convince the children to come with them depriving the parents of their children causing fear and panic in the hopes that the parents would pay them the money." After then reviewing the elements of the offences and satisfying herself that those had been proven beyond a reasonable doubt, she convicted both accused.

Evidence Relating to Collusion

[16]   There was evidence of potential collusion.

[17]   Following the events at the schools, once the family members had returned home and before they provided statements to the police, they had discussions about what had happened. Both J and A testified that their parents asked them to write down their experiences, but the parents made no mention of this on direct examination and were not asked about it on cross-examination. J and A were unable to produce the notes at the trial. The accused say that all of this invites questions about collusion.

[18]   In J's police statement (the police statements of J and A were admitted into evidence under section 715.1 of the *Criminal Code*, RSC 1985, c C-46), she made comments suggestive of collusion. Most significantly, she said that her mother had reminded her "like over 100 times" to tell the truth but J added: "Because she doesn't -- if they say something else -- like if my parents said something and we all said it like the same thing . . . and then they lied then basically it'd be like four against two, so we would win." During her testimony, J explained that, in making the comment "four against two", "[she] had no reason to" say that and that "[she] was being dumb." She said that she did not understand what she meant by the comment when she made it, and that, by the time of the trial—as a twelve-year-old—she would have used better words.

[19]   While testifying, A agreed that some of what she had told police came from her sister, believing that her sister would also share that information; however, those facts were not central to the allegations and, in any event, were admitted by the accused.

[20]   All the children denied that their parents had attempted to influence their evidence other than advising them to tell the truth. The wife and the husband confirmed this.

The Law/Standard of Review

[21]   With respect to the first ground of appeal, the law regarding collusion is well-established. Collusion can have the effect of consciously or unconsciously tainting or tailoring a witness's description of events. The failure of a trial judge, in weighing the evidence, to consider the evidence of potential collusion, including both intentional and unintentional collusion, between or amongst witnesses, is an error of law reviewable on a standard of correctness (see *R v RI*, 2024 ONCA 185 at para 31; *R v Abbasi*, 2020 MBCA 119 at para 21). That being said, the degree to which the risk of collusion affects a witness's evidence is, like all findings of credibility and reliability, subject to significant deference (see *ibid* at para 39).

[22]   Assessment of evidence contains two elements—credibility and reliability. Credibility means whether a witness is being truthful. Reliability reflects the possibility that even a truthful witness can be mistaken. Intentional collusion speaks to a witness's credibility. Unintentional collusion speaks to their reliability (see *R v CG*, 2021 ONCA 809 at para 30).

[23]   As for the second ground of appeal, the standard of review for sufficiency of reasons is functional. The issue is "whether the reasons, considered in the context of the record and the live issues at trial, failed to disclose a logical connection between the evidence and the verdict sufficient to permit meaningful appeal" (*R v REM*, 2008 SCC 51 at para 67 [*REM*]).

Discussion and Decision

[24]   When addressing collusion in her reasons for decision, the trial judge indicated that she had taken into consideration the evidence of the "shock and emotion of the situation" following the incidents at the schools, while the family was awaiting the arrival of the police; and the concerns raised by defence counsel, including J's comment to the police about "four against two", A's admission that some of what she told the police was based on her sister's observations and not her own, and J and A's evidence that the children were told, by their parents, to go to their rooms and write down what had happened.

[25]   The trial judge then stated:

> However, when I look at all of the evidence, I am not of the view that the family colluded to come up with an untruthful version of what happened; that the parents told their children what they were supposed to say. I accept the evidence of [the wife] that her instructions to her children were to tell the truth.
>
> I found all three of the children to be credible and reliable in their testimony. I accept the evidence of [J] and [A] about what [Ji] said and did and [R]'s evidence about what [Zhang] said and did.

[26]   The accused argue that the trial judge erred by first finding that intentional collusion had not occurred, and thereby determining that she need not factor collusion into her analysis of credibility and reliability. They submit that the trial judge erred by not accounting for collusion, both intentional and unintentional, in her assessment of the credibility and reliability of the Crown's witnesses, particularly the children.

[27]   The Crown counters that the trial judge, having found that the family did not engage in intentional collusion, did not need to further factor intentional collusion into her assessment of the evidence. In any event, the Crown says that the trial judge did appropriately consider collusion in her analysis.

[28]   We have little difficulty concluding, from the trial judge's statements as outlined above, that she considered the impact, if any, of intentional collusion on her assessment of the evidence, in particular, the testimony of the children. Her finding that there was no intentional collusion is reasonably supported by the record.

[29]   As for unintentional collusion, the Crown acknowledges, and we agree, that the trial judge could have said more. However, we are satisfied that she did effectively address unintentional collusion when she concluded, in the context of her discussion of collusion, that the children were reliable in their testimony. As noted above, she reviewed the various aspects of tainting argued by defence counsel. Furthermore, her reasons must be considered in the context of the cross-examinations and the final submissions, where intentional collusion was canvassed extensively but little time was spent on unintentional collusion. As well, the trial judge's reasons should be reviewed generously, bearing in mind that she is presumed to know the law (see *R v Meier*, 2025 MBCA 74 at para 25 [*Meier*]). That is, we start from the premise that, in assessing the Crown's evidence, she considered the possibility of unintentional collusion and factored that into her assessment. In our view, the accused have not rebutted that presumption (see *R v EMM*, 2021 ONCA 436 at paras 18, 30). We are not persuaded that the trial judge erred by failing to consider unintentional collusion.

[30]   Moreover, we agree with the Crown that the evidence supported the trial judge's findings. She was entitled to find that the children were credible and reliable. No palpable and overriding error has been demonstrated.

[31]   As for the sufficiency of the trial judge's reasons, the jurisprudence recognizes that it can be difficult to explain and verbalize reasons for making credibility findings (see *REM* at paras 48-51) and that it is not necessary to provide a detailed account of factors supporting or detracting from credibility (see *Meier*).

[32]   Reading the trial judge's reasons in the context of the evidence and the submissions and the reasons as a whole, we are satisfied that they are sufficient to allow meaningful appellate review. It is clear that the defence challenged the credibility of some aspects of the Crown's evidence. The trial judge addressed the concerns raised, including collusion, but nonetheless reasonably concluded that the Crown's witnesses were credible and reliable (see *R v Braich*, 2002 SCC 27 at paras 19-42).

[33]   For the foregoing reasons, both appeals were dismissed.

Simonsen JA

Edmond JA

Kroft JA