Citation: R v LFB, 2026 MBCA 23
Date: 20260312

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice David J. Kroft
Madam Justice Anne M. E. Turner

B E T W E E N:

	)	***A. R. Hodge*** *and*
	)	***S. M. Bednarz***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***D. N. Queau-Guzzi***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
L. F. B.	)	*Decision pronounced:*
	)	***March 3, 2026***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***March 12, 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).

CAMERON JA (for the Court):

[1] The accused appealed his conviction of two counts of sexual assault after trial by a judge in the Court of King's Bench. He has not appealed the sentence of ten years' imprisonment that he received for each offence ordered to be served consecutively (in total twenty years). In essence, his grounds of appeal relate to the trial judge's findings regarding the credibility of the witnesses and the weight that he attributed to certain aspects of the evidence.

At the hearing of the appeal, we dismissed the matter with reasons to follow. These are those reasons.

Background

[2] The facts in this case involve historic sexual assaults commencing in approximately 1993 and continuing until 2007. The victims were the accused's two stepdaughters. The eldest daughter, S.R., testified that the abuse started when she was approximately seven or eight years old. The first occasion involved the accused lying in bed with S.R., touching her vagina over her clothes and positioning his penis on her "butt". The abuse progressed to him forcing her to perform fellatio on him and him forcing cunnilingus on her. He penetrated her vagina with his penis on one occasion, but she kicked him off due to the pain. The abuse was repeated and continued until S.R. left the family home at seventeen years of age.

[3] The younger daughter, M.M., testified that the abuse started when she was about five or six years old. The accused called the victim to lie in bed beside him, where he touched her chest and vagina over her clothing and made her touch his penis over his clothing. The abuse escalated with the accused making her touch his bare penis with her hands and perform fellatio on him. The accused first forced vaginal intercourse on her when she was twelve or thirteen years old. Sexual intercourse continued to occur several times per week, becoming normalized over the years. On one occasion, the accused attempted anal penetration with the victim, but he stopped when she screamed out in pain. The abuse ended when the victim moved out of the family home at eighteen years of age.

[4] The abuse was not disclosed by either victim until they learned in 2021 that their niece, the daughter of their older brother, B.M., disclosed sexual abuse by the accused.

[5] S.R., M.M. and B.M. each testified at the trial. Central to the defence theory was that the three siblings colluded to fabricate the allegations against the accused to support and protect B.M.'s daughter.

[6] While the trial judge acknowledged that there were inconsistencies in the evidence of the three witnesses, he indicated that he believed each of them and rejected the collusion theory when convicting the accused.

Grounds of Appeal and Decision

[7] The accused raises seven grounds of appeal, mainly asserting error in the credibility assessments made by the trial judge. It is common ground that, subject to an error of law, appellate review of a trial judge's findings of credibility are to be shown great deference. Absent palpable and overriding error, findings of credibility should be respected (see *R v NS*, 2012 SCC 72 at para 25). As noted in *R v Jovel*, 2019 MBCA 116, while legal error is often alleged in cases where the appellate court is asked to overturn factual findings, it is important to recall that appellate courts do not retry cases but, rather, review for error (see para 25).

[8] Two of the grounds of appeal can be dismissed on the basis that we do not agree with the accused's characterization of the trial judge's reasoning process related to his credibility assessment.

[9] First, the accused argues that the trial judge erred by considering similar fact evidence. At the trial, the accused argued that the fact that S.R. and M.M. each gave similar descriptions about the first incident of abuse committed by the accused on them demonstrated that they had colluded. In his reasons rejecting this suggestion, the trial judge said that he found the descriptions "to be a pattern of abuse that was used as a grooming technique".

[10] Where an accused is charged on a multi-count indictment, the evidence of each allegation must be kept separate absent its admission for some limited purpose (see *R v Nikkel*, 2006 MBCA 40 at paras 6-11). In this case, no similar fact evidence was admitted. The trial judge instructed himself that he was to consider the evidence of each victim separately. We agree that he conducted an independent analysis of S.R.'s and M.M.'s evidence and concluded that each description, which bore some similarities, was credible as opposed to using the evidence of one as probative of the other, as alleged by the accused. While the trial judge could have been more precise in explaining his reasoning in this regard, we are not convinced that he erred when he found that the accused had groomed each of the victims. Grooming is a pattern of abuse, as recognized in *R v Bertrand Marchand*, 2023 SCC 26, which described it as "a slow and gradual process of active engagement and a desensitization of the child's inhibitions" (at para 51).

[11] Second, the accused argues that the trial judge erred in considering a prior consistent statement of S.R. in finding her to be credible regarding an incident where she described that the accused tried to place her in the "69 position" to force oral sex. In reviewing S.R.'s testimony, the trial judge stated that S.R.'s "recollection of this incident [was] bolstered because she told her cousin [H.C.] about it at the time."

[12] It is an error of law to use a prior consistent statement for the purpose of assisting in the assessment of a witness' credibility or for corroborating the witness (see *R v Walker*, 2015 MBCA 69 at paras 21-26). However, evidence of a prior consistent statement is permissible to establish narrative or to rebut an allegation of recent fabrication (see *ibid* at paras 27-29).

[13] S.R. testified that she could not pinpoint specific instances of abuse by the accused in one of the houses that they had lived in. However, she said that she did remember the "69 position" incident based on her recall that, subsequent to the incident, she and her cousin had found a book depicting such a position and this caused her to tell her cousin about it.

[14] The Crown then asked S.R. about the circumstances of the conversation with her cousin. The Crown stated that the testimony was being proffered as part of the narrative and not for the truth of the allegation.

[15] As well, at the commencement of the trial, the Crown stated that, by agreement with the defence, the Crown would be calling evidence of earlier disclosures of sexual abuse by the victims in direct examination solely to rebut the accused's allegation of recent fabrication but that the evidence was otherwise inadmissible. This process was said to have been followed to avoid the Crown calling rebuttal evidence, thereby allowing defence counsel to have the last word in cross-examination.

[16] In his reasons, the trial judge specifically stated that S.R.'s recollection was bolstered. He did not state that her *credibility* was bolstered, nor did his reasons for finding S.R. to be credible rely on evidence of what she had said to her cousin. The trial judge is presumed to know the law and his reasons are entitled to a functional and contextual reading in this regard

(see *R v Rioux*, 2025 SCC 34 at para 47). In the result, we are not convinced that he erred, as alleged.

[17] Next, the accused asserts that, in failing to reconcile the inconsistencies in the witnesses' evidence, the trial judge provided insufficient reasons and misapprehended the evidence. We disagree.

[18] The trial judge was not required to mention all the evidence or inconsistencies alleged by the defence, and his failure to do so does not mean that he misapprehended the evidence or provided insufficient reasons.

[19] A misapprehension of evidence must be readily obvious and be relevant to a material issue (see *R v Whiteway (BDT) et al*, 2015 MBCA 24 at para 32). Many of the inconsistencies referred to by the accused are immaterial and need not have been addressed by the trial judge.

[20] In general, the trial judge addressed the inconsistencies in the evidence of the witnesses by stating that their existence was hardly surprising in a case such as this, which involved the sharing of ongoing childhood memories describing events from long ago. He reinforced that his job was to consider the totality of the evidence in determining the weight to be attached to the inconsistencies.

[21] In addition, the trial judge specifically addressed two inconsistencies heavily relied on by the defence. The first concerned the inconsistent descriptions given by S.R. and B.M. about when S.R. initially disclosed the abuse to B.M. The trial judge agreed that he could not resolve the inconsistency about when or where the conversation took place, but he found that there was such a conversation.

[22] Second, the trial judge acknowledged an "unexplained" inconsistency in that M.M. testified that she and S.R. had developed a system to protect one another from the abuse of the accused but that S.R. had not mentioned such a system in her testimony.

[23] I note that a review of the trial transcript demonstrates that S.R. was not asked whether she and M.M. had developed such a system. Nonetheless, in his final determination, the trial judge repeated that there were inconsistencies in some of the evidence but that they were "explained by the perceptions of youth recounting events from a long time ago" and that none of them raised a reasonable doubt. His conclusion is consistent with the comments of McLachlin J in *R v W (R)*, [1992] 2 SCR 122 at 134, 1992 CanLII 56 (SCC):

> In general, where an adult is testifying as to events which occurred when she was a child, her credibility should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying.

[24] Functionally read, the trial judge's reasons explain why he made the credibility and factual findings he did in the context of the arguments raised. On appeal, this Court is not to parse the reasons of the trial judge in search of error but, rather, read them in context and as a whole in light of the live issues at trial. In our view, while not perfect, the reasons of the trial judge do not demonstrate a misapprehension of the evidence, nor are they so legally or factually deficient that they are incapable of being reviewed on appeal such that they are insufficient (see *R v GF*, 2021 SCC 20 at para 69).

[25] We also do not accept the accused's argument that the trial judge erred in taking judicial notice of B.M.'s "repressed memory" absent expert evidence. In his testimony, B.M. stated that, when he was between twelve to fourteen years old, S.R. told him that she had been sexually molested by the accused but that he "buried" the conversation. He said that the memory came out after his daughter told him that the accused had abused her. He also said that his ex-girlfriend had told him that M.M. had told her that she had been abused by the accused but that he made himself believe that it did not happen. B.M. said that he did this to maintain "the family chemistry". The "burying" of information and denial of the abuse of his sisters by the accused was a recurrent theme in B.M.'s testimony.

[26] In his reasons, the trial judge stated that he was unsurprised that B.M. lacked recall of the events as "he did everything possible to ignore the concerns and bury any knowledge of the abuse as he did not want to upset the family chemistry" and that it was another example of "someone trying to maintain family peace." Contrary to the accused's argument, in making these statements, the trial judge did not refer to repressed memory or take judicial notice of B.M.'s memory capabilities. To the contrary, he was referring to the weight that he was attaching to B.M.'s lack of memory in response to the arguments made concerning the contradictions between the evidence of B.M., S.R. and M.M.

[27] Finally, the accused argues that the trial judge erred when he attributed little weight to a medical report that the accused obtained shortly before the trial, which indicated that his penis was circumcised. This contrasted with S.R.'s statement to the police wherein she stated that he was

uncircumcised. In her testimony, S.R. stated she was unsure, but she believed he was uncircumcised.

[28] Given that the evidence of the status of the accused's circumcision occurred "decades" after the alleged abuse, we are not convinced that the trial judge erred in his assessment of the weight he attributed to this evidence. Furthermore, while not making any determinative comment, we would note the Crown's argument to the effect that, considering that the victims were very young at the time the forced acts of abuse started and that the victims were focussed on the pain, confusion and fear they experienced, the failure to differentiate between a circumcised and uncircumcised penis would not necessarily be as significant as it might be in other circumstances, such as an intimate, willing sexual encounter between adults.

[29] Given our above rulings, we would also dismiss the accused's argument that the verdict was unreasonable. The verdict is one which the trial judge could reasonably have rendered (see *R v RP*, 2012 SCC 22 at paras 9).

[30] In the result, we dismissed the accused's conviction appeal.

Cameron JA

Kroft JA

Turner JA