NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. D.O.B.*, 2015 NSCA 74

Date: 20150729
Docket: CA 436352
Registry: Halifax

Between:

D.O.B.

Appellant

v.

HER MAJESTY THE QUEEN

Respondent

Restriction on Publication: s. 486 C.C.	
Judges:	MacDonald, C.J.N.S.; Bryson and Bourgeois, JJ.A.
Appeal Heard:	June 3, 2015, in Halifax, Nova Scotia
Held:	Appeal dismissed, per reasons for judgment of MacDonald, C.J.N.S.; Bryson and Bourgeois, JJ.A. concurring
Counsel:	Aaron D. Martens, for the appellant Mark Scott, for the respondent

Order restricting publication – sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 172.2, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with stepdaughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (a)(i) to (iii).

Reasons for judgment:

[1] The appellant seeks to set aside his conviction for sexually assaulting his teenaged niece during a sleepover at his home.

BACKGROUND

[2] As a 13 year old, A.M. was very close to Aunt H.B., her mother's sister. She enjoyed sleepovers at her house. On those occasions, she would always sleep on the couch in the living room, while Aunt H.B. and her husband, the appellant, slept in one of the two bedrooms. Her three little cousins slept together in the second bedroom. During one such sleepover between January and June, 2013, A.M. claims to have been sexually assaulted by the appellant. It was the middle of the night when she awoke to find him next to her. She testified:

> A. I was sleeping on the couch, and [D.] had come out and he had woken me up and under the blankets I felt movement of the blankets. And I opened my eyes slightly and I tried to…I tried to move around so he would stop. And…he got his hand under the blanket and I was slowly stirring trying to move around so it would seem like I was waking up. And so he had reached into my pyjama bottoms and…he touched me.
>
> Q. Okay. Where did he touch you?
>
> A. He touched my vagina.
>
> Q. Hm…mm. And what did he touch your vagina with?
>
> A. His finger.
>
> Q. Hm…mm. And was this over the top of your pyjamas or underneath?
>
> A. Underneath.
>
> Q. Hm…mm. And did you have underwear on underneath your pyjamas?
>
> A. Yes.
>
> Q. And were they…was he touching you over or under your underwear?
>
> A. Under.
>
> Q. Hm…mm. Okay. And how long did he continue to touch you?
>
> A. Maybe five or ten minutes.

[3] A.M. eventually told her boyfriend about this. He told his parents, who told A.M.'s mother, who contacted the police. This led to the charges underlying this appeal.

[4] The matter eventually came on for trial before Judge Paul Scovil of the Nova Scotia Provincial Court. It was a relatively brief trial with four witnesses: two for the Crown and two for the defence. The Crown first called A.M. who explained what had happened to her. It then called A.M.'s mother to corroborate portions of her daughter's evidence. For example, she confirmed the close family relationship, at least before this event. She also confirmed that A.M. had regular unescorted sleepovers until about March of 2013, when, for no apparent reason (at that time), her requests stopped.

[5] The appellant testified on his own behalf, completely denying the incident. Instead, he asserted that A.M. had not slept over since Christmas of 2012 (before the timeframe set out in the indictment). This was because A.M. had been bossy to their children. She was also jealous of them. As such, she was no longer welcome to sleep over. He also asserted that because of their small bedroom, he would have had to crawl over his wife in order to get out of bed in the middle of the night. This would have, therefore, made it difficult to commit such an act undetected.

[6] H.B. also testified in her husband's defence. She confirmed that Christmas of 2012 was A.M.'s last sleepover and after that she was no longer welcome. She also confirmed the difficulty the appellant would have had getting out of bed in the middle of the night, that she was a light sleeper and that she, at no time, recalled the appellant ever attempting to do so.

[7] Having heard this evidence, the judge was satisfied beyond a reasonable doubt that this incident occurred as A.M. described. He concluded:

> [27] Dealing first with Mr. [B.]'s evidence and to some extent Mrs. [B.]'s, it does not hold any credibility to me. He went to great lengths to vilify the victim, yet on the other hand says how close they were. He indicates that at Christmas of 2012 that there were a great deal of problems they were having with [A.M.], that she wasn't treating their kids well. She was swearing, that they talked to her a number of times. His wife said they'd had enough, no longer allowed her to come back and told her that.
>
> [27] sic Surprisingly none of this was put to…to [A.M.]. None of it was put to her mother. It's incredible that someone would have trouble with a child like that who is so close, over all the time, and not have discussed it with the mother of that child, even though that mother was there at Christmas time, and not quite

> frankly over there often. It is also surprising after that that Mrs. [B.] described her relationship with [A.M.] as being close and that it was close before. I don't think it makes sense to describe a relationship as close and then indicate that all those things were going on. I find that Mrs. [B.]'s evidence was tailored simply to assist Mr. [B.] in his defence. It did not have the ring of reality, and I reject it.
>
> [28] Having said that and rejected their evidence, it does not raise any reasonable doubt and I still have to look at the entirety of the Crown's evidence.
>
> [29] In relation to this [A.M.] was quite credible. I have to treat her evidence as well as a child evidence and the Supreme Court of Canada in a number of cases, and particularly **R. v. WR** (1992) 2SCR 122, indicated:
>
> > "That the test of credibility applied to adult witnesses should not be applied to children. Common sense must be applied after the strength in witness weaknesses of the evidence in the case is considered."
>
> [30] One has to take this as the evidence of a 13 year old. I don't take her as being very sophisticated. I take her as very credible. This obviously happened to her. It had a marked impact on her. Questions about exactly what time of night can vary, other details can vary, the essential element of the fact that he touched her vagina with his hand did not vary, and it had the ring of truth.
>
> [31] In relation to that I'm convinced beyond any reason[able] doubt that that occurred, and I convict the accused accordingly.

ISSUES

[8] The appellant identifies the following issues on appeal:

> 1. The trial judge erred in law by convicting the appellant of an offence not specified in the Indictment;
>
> 2. The trial judge erred in law by misapplying the test in *R. v. W.(D.)*, [1991] 1 S.C.R. 742;
>
> 3. The conviction constitutes an unreasonable verdict and cannot be supported by the evidence;
>
> 4. The trial judge erred in fact by making palpable and overriding errors in his findings such as to constitute a miscarriage of justice;
>
> 5. The trial judge did not issue adequate reasons in dismissing the defence evidence and therefore finding Mr. [B.] guilty.

[9] In my analysis that follows, I will address each of the issues in order and, in the process, I will apply the appropriate standards of review.

ANALYSIS

The trial judge erred in law by convicting the appellant of an offence not specified in the Indictment

[10] In advancing this ground of appeal, the appellant highlights the defence evidence that A.M. did not sleep at his place since December of 2012, before the time alleged in the indictment. Essentially, he asserts that, due to inconsistencies in the Crown evidence, the judge should have preferred his version of events over that offered by the Crown (or at least, been left with a reasonable doubt by it). Of course, we must defer to the trial judge's factual findings, given it was he, and not us, who saw the witnesses. We are simply left with the poor alternative of words on a page. Short of palpable and overriding error, it is not our place to interfere. Here, the judge accepted A.M.'s evidence that the incident happened sometime between January and June, 2013, exactly as alleged in the indictment. This is an unassailable factual finding. There is no merit to this aspect of the appeal.

The trial judge erred in law by misapplying the test in *R. v. W.(D.)*, [1991] 1 S.C.R. 742

[11] Despite its title, this ground appears to be more of the same - a challenge to the judge's factual findings. For example, the appellant begins this portion of his factum with:

> [24] The defence evidence clearly and directly contradicted the Crown's evidence on numerous vital fronts: whether the offence actually happened, whether [A.M.] was in the [B.]s' residence overnight in 2013, whether Mr. [B.] had the opportunity to touch her sexually while unnoticed, and whether [A.M.] might have motive to fabricate her allegations and testimony. The trial judge disposed of these sources of reasonable doubt by dismissing the defence evidence, and ostensibly examined the Crown evidence on its own merits for reasonable doubt, and found none. With all due respect, the Crown evidence alone contained enough inconsistencies and contradictions to raise reasonable doubts.

[12] Respectfully, this is another misguided attack on the judge's unassailable factual findings. Furthermore, the judge was well aware of the guidance offered by the Supreme Court in *R. v. W(D)*, [1991] 1 S.C.R. 742. He stated:

> [23] In relation to **R. v. WD**, it always bears repeating even though we've all heard it many times. If I believe the accused in his denials, then clearly I must acquit because it would raise a reasonable doubt. Even if I do not accept the accused but on his evidence it raises a doubt, I must acquit. Even if I reject the

> accused and his…his other witnesses…or witness, if any of that raises a doubt, I must acquit. But I must go further. I must review the whole of the evidence, and particularly one has to concern oneself with the evidence of the complainant and her cross-examination. If on that I'm raised…been…if it's been raised as a reasonable doubt, that goes to the benefit of the accused. It's reasonable doubt on any of the elements of the offence, basically it's clear, the question is did he ever touch her. If I have doubts about that, I must acquit.

[13] There is no merit to this aspect of the appeal.

The conviction constitutes an unreasonable verdict and cannot be supported by the evidence

[14] The appellant accurately sets out the test for establishing an unreasonable verdict; namely whether, on the evidence, a properly instructed jury acting judicially could reasonably have rendered the guilty verdict. For judge alone trials, we have the added responsibility to look out for defective analyses that might render a verdict unreasonable. He explains in his factum:

> [31] The factual foundation for this issue was laid out in the previous issue, specifically relating to the Crown's evidence and [A.M.]'s various inconsistencies and contradictions. The legal test for this issue was best laid out in *Biniaris*:
>
> > 36 The test for an appellate court determining whether the verdict of a jury or the judgment of a trial judge is unreasonable or cannot be supported by the evidence has been unequivocally expressed in Yebes as follows:
> >
> > [C]urial review is invited whenever a jury goes beyond a reasonable standard. . . . [T]he test is 'whether the verdict is one that a properly instructed jury acting judicially, could reasonably have rendered'.
> >
> > (Yebes, supra, at p. 185 (quoting Corbett v. The Queen, 1973 CanLII 199 (SCC), [1975] 2 S.C.R. 275, at p. 282, per Pigeon J.).)
> >
> > That formulation of the test imports both an objective assessment and, to some extent, a subjective one. It requires the appeal court to determine what verdict a reasonable jury, properly instructed, could judicially have arrived at, and, in doing so, to review, analyze and, within the limits of appellate disadvantage, weigh the evidence. This latter process is usually understood as referring to a subjective exercise, requiring the appeal court to examine the weight of the evidence, rather than its bare sufficiency. The test is therefore mixed, and it is more helpful to articulate what the application of that test entails, than to characterize it as either an objective or a subjective test.

[32] Where the judgement in question is that of a single judge, the appellate court may find an analytical flaw that demonstrates an unreasonable conclusion that justifies reversal. Logical inconsistencies can result in an unreasonable verdict.

> [...] in trials by judge alone, the court of appeal often can and should identify the defects in the analysis that led the trier of fact to an unreasonable conclusion. The court of appeal will therefore be justified to intervene and set aside a verdict as unreasonable when the reasons of the trial judge reveal that he or she was not alive to an applicable legal principle, or entered a verdict inconsistent with the factual conclusions reached. These discernable defects are themselves sometimes akin to a separate error of law, and therefore easily sustain the conclusion that the unreasonable verdict which rests upon them also raises a question of law.

[15] To support his contention of an unreasonable verdict the appellant asserts:

[33] Here the judge found that Mr. [B.] touched [A.M.] sexually, in spite of evidence that her statements to police were at least partially untrue, in spite of inconsistencies between her testimony in court and statements to police, in spite of inconsistencies within her testimony in court, and in spite of her serious credibility issues going unaddressed. He only says that Mr. [B.]'s testimony "does not hold any credibility for me." He gives no actual reasons to find Mr. [B.] unbelievable, other than to wrongly state that Mr. [B.] went to great lengths to vilify the victim, and then repeat Mr. [B.]'s allegations of [A.M.]'s behavioural issues. A review of Mr. [B.]'s testimony indicates a neutral tone toward [A.M.], and an absence of loaded language that would cast aspersions on her character. The harshest treatment [A.M.] was given was experiencing a thorough cross-examination by Mr. [B.]'s counsel, who likewise made no statements of value judgement, and only pointed out inconsistencies in her evidence. The judge's allegation of vilification is unsupported by the record.

[34] The judge also wrongly said that the behavioural issues alleged by both Mr. and Mrs. [B.] were never put to [A.M.]: they were, and she denied them. The judge found Mrs. [B.]'s evidence to be tailored and bereft of the precious "ring of reality," but made no such finding regarding Mr. [B.], let alone giving any reason to reject his coherent and consistent evidence. The judge appears to have discarded the proverbial baby of Mr. [B.]'s evidence with the bathwater of Mrs. [B.]'s testimony. The judge further appears to have not been fully alive to the issues of Mr. [B.]'s consistent evidence and how it contrasted with the complainant's confused testimony, and appears to have reached an unreasonable conclusion regarding who to believe and why. That the judge was wrong to disregard Mrs. [B.]'s testimony will be expanded on below.

[35] Credibility assessments are subject to appellate review, and appeal courts are empowered to intervene where appropriate:

> Nonetheless, an appeal court has the duty to re-examine, and to some extent re-weigh the effect of the evidence, to ensure that the verdict is one that a properly instructed trier of fact, acting reasonably, could have reached. This duty, and consequent power to intervene, extends to verdicts founded on credibility assessments (See: R. v. W. (R.), [1992] 2 S.C.R. 122; R. v. Burke, [1996] 1 S.C.R. 474).
>
> This appears to be a case where Mr. [B.]'s credibility, and to some extent that of Mrs. [B.], was wrongly impugned, where his testimony was disregarded without sufficient cause, and where the verdict is therefore unsupported by the evidence.

[16] I have reviewed this entire record carefully and am convinced that this is a verdict which a properly instructed jury could reasonably reach. There is ample evidence to support it. One need look no further than A.M.'s evidence, which the judge was fully entitled to accept. Furthermore, there were no defects in the judge's reasoning that lead me to question the verdict. That said, I will address several of the appellant's specific complaints.

[17] Despite the appellant's assertions to the contrary, the judge did address the inconsistencies in A.M.'s testimony but noted that (a) she was consistent when it came to the crucial facts and (b) she was a child witness. For ease of reference, I repeat that portion of the judgment:

> [29] In relation to this [A.M.] was quite credible. I have to treat her evidence as well as a child evidence and the Supreme Court of Canada in a number of cases, and particularly R. v. WR (1992) 2 SCR 122, indicated:
>
> > "That the test of credibility applied to adult witnesses should not be applied to children. Common sense must be applied after the strength in witness weaknesses of the evidence in the case is considered."
>
> [30] One has to take this as the evidence of a 13 year old. I don't take her as being very sophisticated. I take her as very credible. This obviously happened to her. It had marked impact on her. Questions about exactly what time of night can vary, other details can vary, the essential element of the fact that he touched her vagina with his hand did not vary, and it had the ring of truth.

[18] Furthermore, it is not as though the appellant's evidence was perfectly consistent. For example, both he and his wife insisted that A.M. was no longer welcome after December of 2012 and that Mrs. B. made that clear to A.M. "before Christmas". She testified on cross-examination:

> Q. And when did you tell her not to come back?
>
> A. When?

Q. Yeah, when did you talk to her about that?

A. Before Christmas.

Q. Before Christmas?

A. Yes.

Q. Okay. When had your…you and your husband talked about her not coming back?

A. That was around the time.

Q. Hm..mm. So it wouldn't have been in January?

A. No, because they never stayed overnight anymore and I never even seen them in January because they rarely ever came out.

[19] Yet the appellant said that he and his wife did not even talk about forbidding sleepovers until sometime in January, 2013 (within the indictment period). He testified:

Q. …they actually stayed overnight, right?

A. Not…not since 2012.

Q. No? You're sure of that?

A. Positive.

Q. Okay. And how do you know that?

A. Me and my wife was already discussing it.

Q. So you talked it over with her?

A. Yeah.

Q. Yeah.

A. And we know for sure in 2012 we stopped.

Q. And when did you talk about that?

A. That would've been in January.

Q. Yeah.

A. Of last year.

Q. January 2013?

A. 2013, yes.

Q. So it was after Christmas you talked about it?

A. Yes.

[20] Then, in describing their bedroom, the appellant insisted that he would have to climb over his light sleeping wife to commit this crime. The bed was against the wall and he slept on the inside. As well, a dresser prevented him from exiting from the foot of the bed:

> Q. I see. Now, let's go back to your bedroom. Can you tell me how is your…how's the bed located in your room? What…if you know what size your room is or…can you give some details on that?
>
> A. The bed's located on the outside wall and to all the way to the back of the other wall which would be the end of the trailer. You can see right down the hallway, and the bathroom is adjacent to that.
>
> Q. Okay. You said the bed's against one wall, is that correct?
>
> A. Yes.
>
> Q. And can you tell me what side of the bed you sleep on?
>
> A. The inside.
>
> Q. Is that against the wall?
>
> A. Against the wall and against the…well, actually both walls.
>
> Q. I see. I see. And your wife sleeps on the outside?
>
> A. Yes.
>
> Q. So for you to get off this bed what would you have to do to get off your bed?
>
> A. Crawl over my wife.
>
> Q. But you could crawl down to the bottom, could you not?
>
> A. No, we have a dresser there.

[21] Yet, according to Mrs. B., there was no such dresser:

> Q. And you describe your bed as a double bed?
>
> A. Yes.
>
> Q. Not a queen?
>
> A. No, it's a double.
>
> Q. Double bed. And there's another bed there. Is there a dresser in the bedroom as well?
>
> A. No.
>
> Q. No dresser?

A. No.

[22] Then the appellant asserts that the judge's "allegation of vilification" is unfair and unsupported by the record. In my view, it is well justified. To bolster his denials, the appellant (and Mrs. B.) attempted to place the blame squarely on A.M. and her purportedly bad behaviour. They said she was "bossy" to their children and "really jealous" of them. This may not amount to "vilification" in some contexts. But here we have a child testifying about a very sensitive and delicate subject matter - being sexually abused by a close family member. Defence evidence that paints her as the villain, in this context, justifies the judge's use of "vilification" as a descriptor. It certainly does not reflect a misapprehension of the evidence.

[23] The appellant also complains that "the judge also wrongly said that the behavioural issues… were never put to [A.M.]: they were, and she denied them". Here again is the passage to which the appellant refers:

> [27] Dealing first with Mr. [B.]'s evidence and to some extent Mrs. [B.]'s, it does not hold any credibility to me. He went to great lengths to vilify the victim, yet on the other hand says how close they were. He indicates that at Christmas of 2012 that there were a great deal of problems they were having with [A.M.], that she wasn't treating their kids well. She was swearing, that they talked to her a number of times. His wife said they'd had enough, no longer allowed her to come back and told her that.
>
> [27] sic Surprisingly none of this was put to…to [A.M.]. None of it was put to her mother. It's incredible that someone would have trouble with a child like that who is so close, over all the time, and not have discussed it with the mother of that child, even though that mother was there at Christmas time, and not quite frankly over there often. It is also surprising after that that Mrs. [B.] described her relationship with [A.M.] as being close and that it was close before. I don't think it makes sense to describe a relationship as close and then indicate that all those things were going on. I find that Mrs. [B.]s' evidence was tailored simply to assist Mr. [B.] in his defence. It did not have the ring of reality, and I reject it.

[24] I agree that A.M. was asked about the behavioural issues but denied them. However, that appears to be no more than an apparent slip by the judge. Based on the rest of the passage, it appears that he was actually referring to A.M.'s mother not being questioned about this. Like the judge, I too find this to be quite puzzling. Furthermore, while A.M. was asked about misbehaving, she was never queried about being no longer welcome. I also find this to be puzzling, since all this was so fundamental to the appellant's defence. For example, here is the full extent of what A.M. was asked:

> Mr. D'arcy: …Ms. [B.], your aunt, had you and her had conversations or, I'll call them arguments or conversations over your use of language at her home?
>
> A. What was the question?
>
> Q. Had you and Ms. [B.], your aunt, had you and her had any discussions about your uses of foul language in her home?
>
> A. No.
>
> Q. You never had any…any conversations about her not liking your language?
>
> A. No.
>
> Q. What about your, lack of a better expression, bossing of her children?
>
> A. No.

[25] Again, as the judge noted, none of this was ever put to A.M.'s mother.

[26] The remainder of the appellant's complaints, under this ground, appear to be no more than another attack on the judge's unassailable factual findings or about the brevity of his decision. This latter complaint will be addressed below as a separate ground of appeal.

[27] There is no merit to this ground of appeal.

The trial judge erred in fact by making palpable and overriding errors in his findings such as to constitute a miscarriage of justice

[28] There is nothing discrete in this ground of appeal that has not already been addressed. Regardless of how the appellant may frame the issue, there are simply no palpable and overriding errors of fact apparent in this record. As with the other attacks on the judge's unassailable factual findings, there is no merit to the ground of appeal.

The trial judge did not issue adequate reasons in dismissing the defence evidence and therefore finding Mr. [B.] guilty

[29] In his factum, the appellant offers this challenge to the judge's reasons:

> In this case we have a scant number of paragraphs basing the judge's decision, with bald assertions regarding who to believe and very little explanation why there is no reasonable doubt. Coupling those assertions with errors of fact made in those few lines of explanation and there are effectively no sufficient reasons surviving scrutiny to justify the decision to convict.

[30] Note that the appellant again relies on purported errors of fact to bolster this ground of appeal. However, as I have described above, there are no such errors and, therefore, no basis to accept this "coupling" invitation. Instead, the only consideration with this ground of appeal can be the adequacy of the judge's reasons.

[31] Turning to the merits of this submission, it would be helpful to first consider our role in assessing reasons that are said to be inadequate. For example, we will not overturn a decision solely because reasons may appear to be faulty. Instead, we must be practical and consider the consequences of such a failure in the context of the entire record. This was highlighted by the Supreme Court of Canada in *R. v. Sheppard*, 2002 SCC 26:

> I have stressed the necessary connection in the appellate context between the failure to provide proper reasons and frustration of rights of appeal. Some judicial commentators have taken recent cases in this Court and elsewhere as authority for a more general duty to give reasons: see, e.g., "Do Trial Judges Have a Duty to Give Reasons for Convicting?" (1999), 25 C.R. (5th) 150, by Justice Gerard Mitchell of the Prince Edward Island Court of Appeal, at p. 156; Judge Ian MacDonnell of the Ontario Provincial Court, "Reasons for Judgment and Fundamental Justice", in J. Cameron, ed., *The Charter's Impact on the Criminal Justice System* (1996), 151, at pp. 158-59; and R.J. Allen and G. T. G. Seniuk, "Two Puzzles of Juridical Proof" (1997), 76 *Can. Bar Rev*. 65, at pp. 69-80. See also: D. Stuart, *Charter Justice in Canadian Criminal Law* (3rd ed. 2001), at p. 187; and G. Cournoyer, Annotation to *R. v. Biniaris* (2000), 2000 SCC 15 (CanLII), 32 C.R. (5th) 1, at p. 6. To the extent these commentators are saying that giving reasons is part of the job of a professional judge and accountability for the exercise of judicial power demands no less, I agree with them. To the extent they go further and say that the inadequacy of reasons provides a free-standing right of appeal and in itself confers entitlement to appellate intervention, I part company. The requirement of reasons, in whatever context it is raised, should be given a functional and purposeful interpretation.

[32] In *Sheppard*, the court went on to offer ten non-exhaustive propositions to help both trial judges and appellate courts. I will highlight those most relevant to this appeal:

> 55 My reading of the cases suggests that the present state of the law on the duty of a trial judge to give reasons, viewed in the context of appellate intervention in a criminal case, can be summarized in the following propositions, which are intended to be helpful rather than exhaustive:

1. The delivery of reasoned decisions is inherent in the judge's role. It is part of his or her accountability for the discharge of the responsibilities of the office. In its most general sense, the obligation to provide reasons for a decision is owed to the public at large.

2. *An accused person should not be left in doubt about why a conviction has been entered. Reasons for judgment may be important to clarify the basis for the conviction but, on the other hand, the basis may be clear from the record. The question is whether, in all the circumstances, the functional need to know has been met*.

3. The lawyers for the parties may require reasons to assist them in considering and advising with respect to a potential appeal. On the other hand, they may know all that is required to be known for that purpose on the basis of the rest of the record.

4. The statutory right of appeal, being directed to a conviction (or, in the case of the Crown, to a judgment or verdict of acquittal) rather than to the reasons for that result, not every failure or deficiency in the reasons provides a ground of appeal.

5. Reasons perform an important function in the appellate process. Where the functional needs are not satisfied, the appellate court may conclude that it is a case of unreasonable verdict, an error of law, or a miscarriage of justice within the scope of s. 686(1)(*a*) of the *Criminal Code*, depending on the circumstances of the case and the nature and importance of the trial decision being rendered.

6. Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue, unless the basis of the trial judge's conclusion is apparent from the record, even without being articulated.

7. *Regard will be had to the time constraints and general press of business in the criminal courts. The trial judge is not held to some abstract standard of perfection. It is neither expected nor required that the trial judge's reasons provide the equivalent of a jury instruction*.

8. *The trial judge's duty is satisfied by reasons which are sufficient to serve the purpose for which the duty is imposed, i.e., a decision which, having regard to the particular circumstances of the case, is reasonably intelligible to the parties and provides the basis for meaningful appellate review of the correctness of the trial judge's decision*.

9. While it is presumed that judges know the law with which they work day in and day out and deal competently with the issues of fact**,** the presumption is of limited relevance. Even learned judges can err in particular cases, and it is the correctness of

> the decision in a particular case that the parties are entitled to have reviewed by the appellate court.
>
> 10. Where the trial decision is deficient in explaining the result to the parties, but the appeal court considers itself able to do so, the appeal court's explanation in its own reasons is sufficient. There is no need in that case for a new trial. Such an error of law at the trial level, if it is so found, would be cured under the s. 686(1)(*b*)(iii) proviso.
>
> [Emphasis added]

[33] Then, in *R. v. M (R.E.)*, 2008 SCC 51, the Supreme Court offered this supplementary guidance when, as here, credibility was a key issue:

> [48] The sufficiency of reasons on findings of credibility — the issue in this case — merits specific comment. The Court tackled this issue in *Gagnon*, setting aside an appellate decision that had ruled that the trial judge's reasons on credibility were deficient. Bastarache and Abella JJ., at para. 20, observed that "[a]ssessing credibility is not a science." They went on to state that it may be difficult for a trial judge "to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events", and warned against appellate courts ignoring the trial judge's unique position to see and hear the witnesses and instead substituting their own assessment of credibility for the trial judge's.
>
> [49] While it is useful for a judge to attempt to articulate the reasons for believing a witness and disbelieving another in general or on a particular point, the fact remains that the exercise may not be purely intellectual and may involve factors that are difficult to verbalize. Furthermore, embellishing why a particular witness's evidence is rejected may involve the judge saying unflattering things about the witness; judges may wish to spare the accused who takes the stand to deny the crime, for example, the indignity of not only rejecting his evidence and convicting him, but adding negative comments about his demeanor. In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization.
>
> [50] What constitutes sufficient reasons on issues of credibility may be deduced from *Dinardo*, where Charron J. held that findings on credibility must be made with regard to the other evidence in the case (para. 23). This may require at least some reference to the contradictory evidence. However, as *Dinardo* makes clear, what is required is that the reasons show that the judge has seized the substance of the issue. "In a case that turns on credibility . . . the trial judge must direct his or her mind to the decisive question of whether the accused's evidence, considered in the context of the evidence as a whole, raises a reasonable doubt as to his guilt" (para. 23). Charron J. went on to dispel the suggestion that the trial judge is

> required to enter into a detailed account of the conflicting evidence: *Dinardo*, at para. 30.
>
> [51] The degree of detail required in explaining findings on credibility may also, as discussed above, vary with the evidentiary record and the dynamic of the trial. The factors supporting or detracting from credibility may be clear from the record. In such cases, the trial judge's reasons will not be found deficient simply because the trial judge failed to recite these factors.

[34] In *R. v. M. (R.E.)*, the Court also succinctly summarized our role in considering the adequacy of a trial judge's reasons:

> [57] Appellate courts must ask themselves the critical question set out in *Sheppard*: Do the trial judge's reasons, considered in the context of the evidentiary record, the live issues as they emerged at trial and the submissions of counsel, deprive the appellant of the right to meaningful appellate review? To conduct meaningful appellate review, the court must be able to discern the foundation of the conviction. Essential findings of credibility must have been made, and critical issues of law must have been resolved. If the appellate court concludes that the trial judge on the record as a whole did not deal with the substance of the critical issues on the case (as was the case in *Sheppard* and *Dinardo*), then, and then only, is it entitled to conclude that the deficiency of the reasons constitute error in law.

[35] While none of these principles can be ignored, the following three are particularly pertinent in this appeal:

- Does the appellant know why he was convicted? (*Sheppard* proposition # 2)
- Do the reasons allow meaningful appellate intervention? (*Sheppard* proposition # 8)
- Do the reasons address the decisive issue of credibility? (*R. v. M. (R.E.)* at paras 50 and 57)

[36] In my view, each of these questions must be answered in the affirmative. The appellant knows why he was convicted. A.M. detailed a sexual assault. The appellant denied it. The judge rejected this denial. It did not leave him with a reasonable doubt. Nor did the evidence, as a whole, leave him with a reasonable doubt.

[37] In short, the judge tracked the three-part instructions offered by the Supreme Court in *R. v. W.D*, *supra*.

[38] For essentially the same reasons, the appellant was able to advance a meaningful appeal. This was not a complicated case. There was just one issue. Did the Crown establish beyond a reasonable doubt that the events occurred as A.M. described? This turned on credibility. After assessing the witnesses' credibility, the judge concluded that the burden had been met.

[39] Finally, the judge addressed this decisive credibility issue head on. He explained why he rejected the defence evidence and why it did not leave him with a reasonable doubt. In short, the judge simply found it incredible to assert that A.M. was the problem and that she was no longer welcome for sleepovers while, in the context of a closely knit family, this was never raised with A.M.'s mother. Then for Mrs. B. to assert that the family continued to be close, after all that transpired, was, for the judge, equally incredible.

[40] I would dismiss this ground of appeal.

Disposition

[41] For all these reasons, I would dismiss the appeal.

MacDonald, C.J.N.S.

Concurred in:

Bryson, J.A.

Bourgeois, J.A.