

In the Court of Appeal of Alberta

Citation: R v McDermott, 2026 ABCA 341

Date: 20261026
Docket: 2503-0054A
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

Joshua Jerome McDermott

Appellant

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that could identify the victim must not be published, broadcast, or transmitted in any way.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Tamara Friesen
The Honourable Justice Karan M. Shaner**

Memorandum of Judgment

Appeal from the Conviction by
The Honourable Justice R.P. Belzil (Sitting with a Jury)
Convicted on the 17th day of April, 2024
(Docket: 220500516Q1)

Memorandum of Judgment

The Court:

[1] The appellant, Joshua Jerome McDermott, was charged with two counts of sexual interference in relation to two underaged complainants. The charges proceeded to trial before a judge and jury in April 2024.

[2] Both complainants testified to being sexually assaulted by the appellant on the same night. At different points in their testimony, each complainant referenced statements they had given to police. The statements were not entered as evidence or otherwise relied upon.

[3] The appellant testified in his own defence, denying he sexually assaulted the complainants. He asserted his former partner, AG, fabricated the allegations in order to blackmail him. He testified to receiving text messages from AG and the complainants consistent with that assertion. According to the appellant, the text messages were not available as evidence because his phone had been stolen, however, his new partner, AD, had seen the messages. Neither AG nor AD was called as a witness.

[4] Less than two hours after retiring to deliberate, the jury returned with three questions: 1) “Why were [AG] and [AD] not called as witnesses”; 2) “Do we get or can we see a transcript”; and 3) “Can we see the police statements”? The trial judge provided the following three answers: 1) “[AG] and [AD] were not called as witnesses, and counsel do not have to explain why they were not called”; 2) “No transcript is available”; and 3) “All of the evidence in this trial was placed before you that you were entitled to hear”. Later that day, the jury convicted the appellant on both charges.

[5] The appellant appeals to this Court, arguing the answers provided by the trial judge were insufficient. He submits that in response to the first question, the jury should have been told not to speculate about why AG and AD were not called and reminded that a reasonable doubt can arise from the absence of evidence. With respect to the second question, the appellant says the trial judge should have informed the jury of procedural accommodations, such as the ability to review audio recordings. The appellant argues the answer provided to the third question raises the same issues as the first and was also deficient because it did not provide instruction regarding the use of prior consistent statements.

[6] The trial judge’s instructions to the jury were approved by counsel. He had given counsel a draft of his intended instructions. Both counsel suggested changes, in particular to references made to AG and AD, and those changes were incorporated. Counsel agreed to the instructions that were ultimately delivered. Neither counsel sought any corrections after they were delivered.

Similarly, the trial judge discussed the jury's questions with counsel and counsel agreed to the answers given.

[7] These facts provide context for application of the standard of review. As the appellant points out, the answers given by the trial judge must be accurate, and counsel's agreement is not determinative of whether there was error. However, as the respondent points out, counsel's agreement can assist this Court in assessing whether an answer was accurate and sufficient, and whether there was prejudice: *R v Abdullahi*, 2023 SCC 19 at paras 67-70 [*Abdullahi*]. Ultimately, the answers given to the jury's questions must, like all jury instructions, be assessed functionally and in context to determine whether they equipped the jury to decide the case according to the law and evidence: *R v Peterson*, 2025 ABCA 134 at para 37 [*Peterson*].

[8] Here, the responses to the jury's questions were accurate. In effect, the appellant argues that while accurate, they were insufficient, because the trial judge should have projected concerns not stated by the jury and answered those concerns too.

[9] Other judges, in response to similar questions, have provided more elaborate answers. That does not mean their answers are the only correct answers. An error of law does not arise simply because a trial judge fails to use particular words or follow a standard formula: *Peterson* at para 39; *Abdullahi* at paras 35, 40, 54. Brevity is a virtue in a jury instruction. If the instructions sufficiently equip the jury with what it needs to consider, the failure to say all that could have been said does not constitute an error of law: *Abdullahi* at para 56.

[10] While responses to questions from the jury require particular scrutiny (*Abdullahi* at para 42; *R v Lozada*, 2024 SCC 18 at para 14), they do not act as a verbal eraser of everything the trial judge has previously told the jury, particularly where the jurors have a written copy of the jury instructions: *Peterson* at para 45.

[11] In this case, shortly prior to answering the questions at issue, the trial judge provided clear instructions regarding the presumption of innocence and the burden of proof, including that there was no burden on the appellant "to prove anything", that a reasonable doubt could arise from the absence of evidence, and that the jury was required to decide the case solely on the evidence adduced at trial. The trial judge noted that neither AG nor AD was called to testify and explained how the evidence about them could or could not be used. He instructed, for example, that statements attributed to AG were hearsay and could not be relied on for their truth. He reviewed the testimony of the three witnesses in some detail. He provided a copy of his closing instructions to the jury for use in their deliberations.

[12] In this context, it is evident that trial counsel, "the person in the courtroom most attuned" to the interests of the accused, did not see a need for more elaborate answers to the questions asked by the jury: *R v Araya*, 2015 SCC 11 at para 51; *R v Griffin*, 2009 SCC 28 at para 47. This supports a conclusion that the brief but accurate answers provided were sufficient.

[13] It is a truism that each case is unique. It is appropriate for trial judges to remain alert to the possibility that jury questions can signal concerns that are not apparent on the face of the questions and that those concerns might need to be addressed. Those assessments are by their nature nuanced and situation-specific. In some cases, appellate intervention may be warranted: see, e.g., *R v Shaw*, 2024 ONCA 119 at paras 68-70, 75-77. However, we are not persuaded any reviewable error was committed in the context of this trial.

[14] The appeal is dismissed. The appellant must surrender himself into custody no later than 2 PM on Wednesday, October 28, 2026.

Appeal heard on October 6, 2026

Memorandum filed at Edmonton, Alberta
this 26th day of October, 2026

Antonio J.A.

Friesen J.A.

Shaner J.A.

Appearances:

D.E. Green
for the Respondent

C. Joly
for the Appellant