



Case in Brief: **R. v. D.F.**

Judgment of April 22, 2024 | On appeal from the Court of Appeal for Ontario  
Neutral citation: 2024 SCC 14

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***The Supreme Court restores the convictions of a man found guilty of sexual assault and sexual interference.***

This appeal dealt with the question of whether a judge in a criminal trial made a mistake in understanding and treating key parts of the complainant's evidence in a manner that led him to unfairly convict the accused. In legal terms, this is called "misapprehending" the evidence.

D.F., whose name cannot be disclosed due to a publication ban protecting the complainant, was accused of sexual assault, sexual interference (meaning touching someone under the age of 16 for a sexual purpose), and of making sexually explicit material available to a child. The complainant was eight years old at the time of the alleged offences. The offences allegedly took place while the accused was spending the day and evening at the house of the complainant's mother. The mother testified that she had been at the house all day and evening except when she briefly stepped out to a nearby store after dinner. D.F. stayed behind during that time with the complainant and her two younger siblings.

At trial, there were some inconsistencies in the complainant's testimony under cross-examination regarding whether or not her mother was home when the alleged sexual touching happened. However, the trial judge held that any minor inconsistencies in her testimony were a result of the complainant's immaturity and confusion, and that she was otherwise credible and reliable. The trial judge also found the other witnesses credible and reliable, including the complainant's mother, who testified that except for her trip to the store, she had been around the children all evening and did not observe any wrongdoing. Based on the evidence as a whole, including the testimonies, the trial judge was satisfied beyond a reasonable doubt of D.F.'s guilt and convicted him.

D.F. appealed his convictions. A majority of the Ontario Court of Appeal dismissed his appeal from the conviction on the count of making sexually explicit material available to a child, but allowed the appeal from his other two convictions. In the majority's view, the trial judge misapprehended the complainant's evidence on whether or not the complainant's mother was home at the time of the alleged sexual touching. That mistake was related to an important issue at trial, and played an essential role in the trial judge's reasoning process leading to convicting D.F. Moreover, the majority said that the trial judge did not sufficiently address the inconsistencies between the complainant's evidence and that of her mother in his decision to convict. For these reasons, the majority ordered that the convictions for sexual assault and sexual interference be set aside and that a new trial be held on those counts.

One judge disagreed and would have dismissed D.F.'s appeal in its entirety. In his view, the trial judge did not make any errors in assessing the evidence. The trial judge recognized that the complainant's evidence regarding the location of her mother at the time of the offences was inconsistent but he had not relied on it to convict D.F. Rather, the trial judge had correctly applied a common sense approach to assessing evidence of child witnesses to determine she was a credible and reliable witness overall. Finally, the dissenting judge determined that the trial judge's reasons sufficiently explained why he was satisfied beyond a reasonable doubt that the accused had committed the offences.

The Crown appealed to the Supreme Court of Canada.

**The Supreme Court has allowed the appeal.**

As such, D.F.'s convictions for sexual assault and sexual interference are restored.

Chief Justice Wagner read the judgment of the Court. You can watch a recording of it [here](#).

A print version of the judgment that was read out will be available here once finalized.

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**Breakdown of the decision:** A majority of the Court allowed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Martin](#), [Kasirer](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#)) | Justice [Rowe](#) would have dismissed the appeal relying on paragraphs 50 and 52 of the majority of the Court of Appeal's reasons.

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