

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Vuradin, 2013 SCC 38, [2013] 2 S.C.R. 639 | **Date:** 20130627**Docket:** 35143 |

**Between:**

**Fabian Vuradin**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** Fish, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

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| **Reasons for Judgment:**(paras. 1 to 29) | Karakatsanis J. (Fish, Rothstein, Cromwell and Moldaver JJ. concurring) |

R. *v.* Vuradin, 2013 SCC 38, [2013] 2 S.C.R. 639

Fabian Vuradin Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.* Vuradin**

2013 SCC 38

File No.:  35143.

2013:  May 16; 2013:  June 27.

Present: Fish, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

on appeal from the court of appeal for alberta

 *Criminal law — Judgments and orders — Sufficiency of reasons — Burden of proof — Accused convicted of sexual assault and unlawful touching for sexual purpose involving four complainants — Whether trial judge’s reasons for judgment sufficient — Whether trial judge properly applied burden of proof.*

 The issues in this appeal are whether the trial judge’s reasons for judgment were sufficient and whether the trial judge properly applied the burden of proof in a criminal case.

 *Held*: The appeal should be dismissed.

 The core question in determining whether the trial judge’s reasons are sufficient is whether the reasons, read in context, show why the judge decided as he did. The trial judge’s reasons satisfy this threshold. The reasons allow for meaningful appellate review because they tell the accused why the trial judge decided as he did. The trial judge found the complainant’s evidence compelling, the problems in her evidence inconsequential, and the accused’s concoction theories speculative. The reasons reveal that the trial judge accepted the complainant’s evidence where it conflicted with the accused’s evidence. No further explanation for rejecting the accused’s evidence was required.

 The trial judge also properly applied the burden of proof. Although a trial judge is not required to outline the *W.(D.)* steps, the trial judge here referred to *W.(D.)* and the dangers that it addressed: the potential for simply comparing stories and for shifting the onus to the accused. The trial judge’s reasons for finding the accused guilty on counts 1 and 2, read in the context of the reasons as a whole, do not reveal an incorrect application of the relevant principles. Here, the accused was not believed. The Crown’s case was considered with the accused’s denial in mind, and the trial judge concluded, as he was entitled to do, that his denial did not raise a reasonable doubt.

**Cases Cited**

 **Referred to:** *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3; *R. v. W.(D.)*, [1991] 1 S.C.R. 742; *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869; *R. v. Dinardo*, 2008 SCC 24, [2008] 1 S.C.R. 788; *R. v. C.L.Y.*, 2008 SCC 2, [2008] 1 S.C.R. 5; *R. v. Boucher*, 2005 SCC 72, [2005] 3 S.C.R. 499.

 APPEAL from a judgment of the Alberta Court of Appeal (Côté, McDonald and O’Ferrall JJ.A.), 2011 ABCA 280, 515 A.R. 25, 55 Alta. L.R. (5th) 45, [2012] 4 W.W.R. 264, 532 W.A.C. 25, [2011] A.J. No. 1057 (QL), 2011 CarswellAlta 1687, setting aside three of the accused’s convictions and ordering a new trial.  Appeal dismissed.

 *Peter J. Royal*, *Q.C.*, and *Tara E. Hayes*, for the appellant.

 *Joanne Dartana*, for the respondent.

 The judgment of the Court was delivered by

 Karakatsanis J. —

I. Introduction

1. The issues in this appeal are whether the trial judge’s reasons for judgment were sufficient and whether the trial judge properly applied the burden of proof in a criminal case.
2. The appellant was charged with four counts of sexual assault and one count of unlawful touching of a person under the age of 14 for a sexual purpose. The charges involved three child complainants and one adult complainant. At trial, the appellant was found guilty of all charges. The majority of the Court of Appeal set aside three convictions and ordered a new trial because similar fact evidence was wrongly admitted. The dissenting judge at the Court of Appeal would have set aside all of the convictions and ordered a new trial: 2011 ABCA 280, 515 A.R. 25. At issue, therefore, are the two counts relating to the youngest complainant (counts 1 and 2).
3. This is an appeal as of right limited to questions of law on which a judge of the Court of Appeal dissented. The appellant relies on two such issues: whether the trial judge’s reasons are sufficient and whether the trial judge correctly applied the burden of proof. The trial judge’s ruling with respect to similar fact evidence is not before us.
4. The trial judge’s reasons are sparse and do not directly address the appellant’s evidence. For the reasons that follow, however, I agree with the majority in the Court of Appeal that the trial judge’s reasons were sufficient and that the trial judge did not err in his application of the burden of proof.

II. Background

1. The trial judge found the youngest complainant’s evidence “compelling”, noting a “particularly poignant exchange” between the complainant and the investigating police officer that had “the ring of truth”. The trial judge stated that (a) the complainant was not shaken on cross-examination; (b) the inconsistencies in her evidence were minor and to be expected (particularly from a child witness); (c) the appellant’s arguments with respect to the physical impossibility of the incidents as described by the complainant were “merely conjecture”; and (d) although the police officer who interviewed the complainant posed leading questions, they did not pertain to the “essential features” of the circumstances leading to the offences. Further, the trial judge characterized the appellant’s suggestion that the complainant concocted the allegations as speculative.
2. With respect to the appellant’s evidence, the trial judge noted that the appellant “simply denied all of the allegations”. Shortly after repeating his finding that the complainant’s evidence was compelling, the trial judge stated his conclusion on counts 1 and 2: “In the end, notwithstanding [the appellant’s] denial, I have no reasonable doubt that the [appellant] did commit the acts which [the complainant] described”.
3. The majority of the Court of Appeal, represented by McDonald J.A. with respect to the issues before this Court, found that the trial judge provided an accurate distillation of the law on the burden of proof in criminal cases and gave reasons that were sufficient because they met “the *Sheppard* requirements and made it clear to the appellant why he had been convicted at trial” (para. 66). Relying on this Court’s decision in *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, McDonald J.A. concluded that the reasons generally demonstrated that where the complainant’s evidence and the accused’s evidence conflicted, the trial judge had accepted the evidence of the complainant.
4. Côté J.A., dissenting, found that the trial judge misapplied the burden of proof and that his reasons were inadequate. With respect to the burden of proof, the verdicts of guilt relating to the youngest complainant were “at best . . . an unexplained conclusion” because the trial judge did not mention the appellant’s evidence in relation to these counts (para. 100). As for the sufficiency of the reasons, the trial judge did not adequately address the problems with the complainant’s evidence. The reasons also did not explain why the appellant’s evidence was rejected or failed to raise a reasonable doubt and did not permit an appellate court to determine whether he misapplied the principles in *R. v. W.(D.)*, [1991] 1 S.C.R. 742.

III. Were the Trial Judge’s Reasons Sufficient?

1. Counsel for the appellant candidly submitted that he was not asking the court to make any new law. Rather, he submitted that the reasons of the trial judge did not explain why the trial judge accepted the evidence of the complainant, despite live credibility issues, and did not address the appellant’s evidence or explain why it was rejected. The reasons did not allow an appellate court to determine whether there was a legal error in the application of *W.(D.)*.
2. An appellate court tasked with determining whether a trial judge gave sufficient reasons must follow a functional approach: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at para. 55. An appeal based on insufficient reasons “will only be allowed where the trial judge’s reasons are so deficient that they foreclose meaningful appellate review”: *R. v. Dinardo*, 2008 SCC 24, [2008] 1 S.C.R. 788, at para. 25.
3. Here, the key issue at trial was credibility. Credibility determinations by a trial judge attract a high degree of deference. In *Dinardo*, Charron J. explained:

Where a case turns largely on determinations of credibility, the sufficiency of the reasons should be considered in light of the deference afforded to trial judges on credibility findings. Rarely will the deficiencies in the trial judge’s credibility analysis, as expressed in the reasons for judgment, merit intervention on appeal. Nevertheless, a failure to sufficiently articulate how credibility concerns were resolved may constitute reversible error (see *R. v. Braich*, [2002] 1 S.C.R. 903, 2002 SCC 27, at para. 23). As this Court noted in *R. v. Gagnon*, [2006] 1 S.C.R. 621, 2006 SCC 17, the accused is entitled to know “why the trial judge is left with no reasonable doubt” . . . . [para. 26]

1. Ultimately, appellate courts considering the sufficiency of reasons “should read them as a whole, in the context of the evidence, the arguments and the trial, with an appreciation of the purposes or functions for which they are delivered”: *R.E.M.*, at para. 16. These purposes “are fulfilled if the reasons, read in context, show why the judge decided as he or she did” (para. 17).
2. In *R.E.M.*, this Court also explained that a trial judge’s failure to explain why he rejected an accused’s plausible denial of the charges does not mean the reasons are deficient as long as the reasons generally demonstrate that, where the complainant’s evidence and the accused’s evidence conflicted, the trial judge accepted the complainant’s evidence. No further explanation for rejecting the accused’s evidence is required as the convictions themselves raise a reasonable inference that the accused’s denial failed to raise a reasonable doubt (see para. 66).
3. The appellant submits that the reasons do not disclose *why* the trial judge decided as he did. Before accepting the complainant’s evidence the trial judge failed to address live issues relating to the credibility of the complainant. A number of the live issues, listed in detail by the dissenting judge in the Court of Appeal, went unmentioned by the trial judge or, if mentioned, were followed by a bald conclusion. Although a trial judge’s credibility findings relating to witnesses should not be lightly disturbed, the trial judge’s reasons do not adequately explain why he accepted the complainant’s evidence and why the appellant’s evidence did not raise a reasonable doubt.
4. The core question in determining whether the trial judge’s reasons are sufficient is the following: Do the reasons, read in context, show why the judge decided as he did on the counts relating to the complainant? In this case, the trial judge’s reasons satisfy this threshold.
5. First, the trial judge found the evidence of the complainant compelling — that is, credible and reliable. He explained why, noting an exchange between the complainant and the investigating police officer to whom she expressed worry about being considered a bad girl because she may have liked what the appellant had done to her. The trial judge stated that this “had the ring of truth”.
6. Second, the trial judge recognized the live issues relating to the complainant’s credibility. He was not obliged to discuss all of the evidence on any given point or answer each and every argument of counsel: *R.E.M.*, atparas. 32 and 64; and *Dinardo*, at para. 30. Here, he noted the problems in her evidence — the lack of a hymen, inconsistency as to the number of incidents, the physical impossibility of some allegations, and leading questions by the police officer who took her statement. He addressed each of them, albeit briefly, ultimately finding that they were inconsequential to his conclusion. He characterized the appellant’s suggestion of concoction as speculative.
7. Third, the trial judge considered the appellant’s denial of the allegations. He acknowledged that the appellant’s evidence may have been more fulsome if his command of the English language were better. Read in context, the trial judge’s reasons reveal that he rejected the appellant’s denial. Later in his reasons, in relation to the other counts, the trial judge stated that the denial was not truthful and did not raise a doubt.
8. I conclude that the reasons were sufficient — they allow for meaningful appellate review because they tell the appellant why the trial judge decided as he did. The trial judge found the complainant’s evidence compelling, the problems in her evidence inconsequential, and the appellant’s concoction theories speculative. The reasons reveal that the trial judge accepted the complainant’s evidence where it conflicted with the appellant’s evidence. No further explanation for rejecting the appellant’s evidence was required.

IV. Did the Trial Judge Err in His Application of the Burden of Proof?

1. The appellant submits that the trial judge misapplied the burden of proof in a criminal case by not following the test in *W.(D.)* and thereby failing to properly assess the appellant’s evidence.
2. The paramount question in a criminal case is whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused: *W.(D*.*)*, at p. 758. The order in which a trial judge makes credibility findings of witnesses is inconsequential as long as the principle of reasonable doubt remains the central consideration. A verdict of guilt must not be based on a choice between the accused’sevidence and the Crown’s evidence: *R. v. C.L.Y.*, 2008 SCC 2, [2008] 1 S.C.R. 5, at paras. 6-8*.* However, trial judges are not required to explain in detail the process they followed to reach a verdict: see *R. v. Boucher*, 2005 SCC 72, [2005] 3 S.C.R. 499, at para. 29.
3. The trial judge adverted to the principles of *W.(D.)* at the outset of his reasons:

*W.(D.)* requires me to attend to the evidence of the accused in a particular way. That does not mean, however, that the accused’s evidence is considered in a vacuum. The dangers that *W.(D.)* addresses are the potential for simply comparing stories and for shifting the onus to the accused. However, the accused’s evidence is part of a body of evidence, all of which bears upon the credit that may be given to any portion of that evidence.

One cannot determine whether the accused’s evidence is true or at least raises a reasonable doubt by simply considering his evidence and the way he gave it. Doing so ignores one of the fundamental [tenets] of fact-finding. It is not just internal consistency which lends credence to testimony. External consistency is also part of the analysis. Evidence inconsistent with found or admitted fact, may be discounted, no matter what its source. [Emphasis added.]

1. Immediately following these paragraphs, the trial judge assessed the complainant’s credibility, starting with the statement: “In this case, [the complainant’s] evidence was compelling.”
2. The appellant argues that in the absence of any reasons why his evidence was rejected or did not raise a reasonable doubt, the reasons suggest that the trial judge first found the complainant credible, and then used that finding — or “found fact” to use the trial judge’s words — to later reject the evidence of the appellant, effectively choosing the Crown’s evidence over that of the defence.
3. In my view, the trial judge was merely articulating general principles of law that *may* be used in assessing the evidence of the accused. Further, in assessing the Crown’s case, the trial judge referred explicitly to the appellant’s denial: “. . . notwithstanding [the appellant’s] denial, I have no reasonable doubt that the [appellant] did commit the acts which [the complainant] described”.
4. I conclude, therefore, that the trial judge properly applied the burden of proof. Although a trial judge is not required to outline the *W.(D.)* steps, the trial judge here referred to *W.(D.)* and the dangers that it addresses: “. . . the potential for simply comparing stories and for shifting the onus to the accused”. In my view, the trial judge’s reasons for finding the appellant guilty on counts 1 and 2, read in the context of the reasons as a whole, do not reveal an incorrect application of the principles outlined in that decision.
5. In the result, the trial judge rejected the appellant’s testimony. In *Boucher*, Charron J. (dissenting in part) stated that when a trial judge rejects an accused’s testimony, “it can generally be concluded that the testimony failed to raise a reasonable doubt in the judge’s mind” (para. 59). Similarly, in *R.E.M.*, McLachlin C.J. stated that “the convictions themselves raise a reasonable inference that the accused’s denial of the charges failed to raise a reasonable doubt” (para. 66).
6. Here, the appellant was not believed. The Crown’s case was considered with the appellant’s denial in mind, and the trial judge concluded, as he was entitled to do, that his denial did not raise a reasonable doubt.

V. Conclusion

1. For these reasons, I would dismiss the appeal.

 *Appeal dismissed.*

 *Solicitors for the appellant:  Royal Teskey, Edmonton.*

 *Solicitor for the respondent:  Attorney General of Alberta, Edmonton.*