

## WARNING

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 486.4(1), (2), (3) or (4) or 486.6(1) or (2) of the *Criminal Code* shall continue. These sections of the *Criminal Code* provide:

**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or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.02, 279.03, 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 step-daughter), 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).

**(2)** In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the complainant of the right to make an application for the order; and

(b) on application made by the complainant, the prosecutor or any such witness, make the order.

**(3)** In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

**(4)** An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community. 2005, c. 32, s. 15; 2005, c. 43, s. 8(3)(b).

**486.6 (1)** Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

**(2)** For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order. 2005, c. 32, s. 15.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. I.M.B., 2012 ONCA 875

DATE: 20121212

DOCKET: C53693

Simmons and Epstein JJ.A. and Speyer J. (*ad hoc*)

BETWEEN

Her Majesty the Queen

Respondent

and

I.M.B.

Appellant

Crystal Tomusiak, for the appellant

Tracy L. Kozlowski, for the respondent

Heard and released orally: December 5, 2012

On appeal from the conviction entered on September 30, 2010 and the sentence imposed on February 7, 2011 by Justice Gordon D. Lemon of the Superior Court of Justice, sitting with a jury.

ENDORSEMENT

[1] We are not persuaded that the charge to the jury would have misled the jury into thinking that they could not use their credibility findings on one count to assist in their reasoning on another count. The impugned sentence of the charge says that the jury must not use evidence that applies to only one count in relation to another count. In our view, the detailed instructions concerning credibility

assessment in general, would have made it clear to the jury that their findings of credibility applied to all counts.

[2] The trial judge gave the jury standard instructions concerning the meaning of consent. We are not persuaded that the appellant's suggestion about tailoring those instructions would have been helpful as opposed to confusing, or that they were necessary.

[3] At the oral hearing the appellant abandoned his ground of appeal in relation to inconsistent verdicts. The appellant acknowledges that the failure to provide the jury with some guidance concerning what could serve as confirmatory evidence with respect to the witnesses subject to a *Vetrovec* warning would not constitute a stand alone ground of appeal.

[4] The conviction appeal is therefore dismissed.

[5] Contrary to the appellant's submissions, in our view, the trial judge's findings of fact in relation to the sentence imposed were well explained and open to him on the evidence before him.

[6] Leave to appeal sentence is granted, but the sentence appeal is dismissed.

"Janet Simmons J.A."

"Gloria Epstein J.A."

"C.M. Speyer J. (*ad hoc*)"