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or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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. G.B., 2014 ONCA 482
DATE: 20140620
DOCKET: C56246

Laskin, Cronk and Blair JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

G.B.

Appellant

Mark C. Halfyard, for the appellant

Megan Stephens, for the respondent

Heard: June 17, 2014

On appeal from the convictions entered on August 1, 2012 by Justice Todd Ducharme of the Superior Court of Justice, sitting without a jury.

ENDORSEMENT

Overview

[1] The appellant seeks to set aside his convictions on nine counts of sexual offences involving two complainants, both his step-granddaughters. He raises two grounds of appeal.

[2] First, he submits that the trial judge's interventions during the examination of witnesses created an appearance of unfairness. Secondly, he submits that the trial judge improperly minimized the impact of a false statement made by one of the complainants that spectators in the courtroom, during trial, were making faces at her and distracting her.

[3] We do not give effect to either of these grounds of appeal.

[4] Seventy-five years old at the time of trial, the appellant was found to have sexually abused the complainants on a regular basis over many years. The offences against one of the complainants, C., occurred over a period of 10 or 11 years, beginning when she was four years old. In the case of the second complainant, A., the sexual abuse occurred over four to six years, beginning when she was seven or eight years old.

[5] The trial judge disbelieved the appellant and found, on the whole of the evidence, that the Crown had proved the offences beyond a reasonable doubt.

Analysis

The Trial Judge's Interventions

[6] The appellant submits that the trial judge intervened at his own instance on many occasions during the examination of witnesses both by the Crown and by the defence, that the interventions gave the impression that he had pre-judged

the appellant's credibility and, accordingly, that the appellant had not received a fair trial.

[7] The appellant focuses on two interventions in particular. The first occurred during the Crown's examination where, it is fair to say, the trial judge's questions arising out of the appellant's revelation that he had purchased Smirnoff vodka for the complainant, C., when she was 11 or 12 years old, displayed at least a certain surprise. The second – again during the Crown's examination – occurred when the appellant was testifying about where he said the children would be sitting when watching TV in his bedroom (the girls were always on the floor). The appellant argues that this latter exchange served to firm up an area of evidence about which one of the other Crown witnesses – a friend of the complainant's – had been unclear, a task that should have been left to counsel and not assumed by the trial judge.

[8] We agree that the trial judge intervened on numerous occasions during the trial, and it would have been preferable had he been more restrained. Taken in isolation, the foregoing examples could be seen as problematic. On the whole of the record, however, we are not satisfied that either the nature or the number of interventions would lead a reasonably minded person to conclude that the appellant did not receive a fair trial.

[9] For the most part, the trial judge's interventions occurred during the Crown's examinations, and therefore did not interfere with the ability of defence counsel to present the defence or preclude the appellant from telling his story in his own way. Many were directed at clarifying matters that were unclear. In other respects, the interventions were designed to assist the appellant by ensuring he understood what was being asked and that the proceedings were fair.

[10] We are not persuaded that the questioning left the impression that the trial judge had pre-judged the appellant's credibility and "placed the authority of his office on the side of the prosecution." See *R v. Valley* (1986), 26 C.C.C. (3d) 207 (Ont. C.A.). We note that the trial judge gave a thorough and well-reasoned decision.

[11] Accordingly, we are not satisfied that the manner in which the trial was conducted created an appearance of unfairness.

The Impact of C's "Lie"

[12] Nor do we think that the trial judge erred by improperly minimizing the impact of C's incorrect complaint that persons favourable to the appellant in the courtroom were distracting her by making faces at her during her testimony. The trial judge did indicate during pre-judgment submissions that he would make a finding that C had lied in that respect, because, as the presiding judge, he had

not noticed any such conduct. In the end, he found that she had been "mistaken" in this regard, and did not draw any negative conclusions about C's credibility based on the "lie".

[13] In our view, it was open to the trial judge to arrive at the ultimate conclusion that he did. Although he indicated during submissions that he would direct himself that C had "lied" with respect to what had happened, he also made it clear to defence counsel that, even though he had concerns on this point, he had not concluded C was not credible. He therefore left the question open. Defence counsel made fulsome submissions about C's lack of credibility generally and we do not think the appellant was prejudiced as a result of the exchange during submissions. The finding was open to the trial judge and is entitled to deference on appeal.

Disposition

[14] Accordingly, we dismiss the appeal.

"John Laskin J.A."
"E.A. Cronk J.A."
"R.A. Blair J.A."