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or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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. P.L., 2015 ONCA 404
DATE: 20150605
DOCKET: C56976

Hoy A.C.J.O., Doherty and Benotto JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

P.L.

Appellant

R. Sheppard, for the appellant

Avene Derwa, for the respondent

Heard and released orally: May 22, 2015

On appeal from the conviction entered on December 6, 2012 by Justice John A. Desotti of the Superior Court of Justice, sitting without a jury.

ENDORSEMENT

[1] The appellant was convicted of sexually assaulting his step-daughter while she was visiting home from university.

[2] The evidence was that she was sleeping by the fireplace on a pull-out mattress in the den. She awoke to find the appellant touching her vagina. The appellant said he was just stoking the fire and denied touching her.

[3] The following morning, the complainant, her boyfriend, and her mother confronted the appellant. The content of their discussion factors into the grounds for appeal.

[4] The appellant submits that the trial judge erred in two respects: 1) by relying on the appellant's convoluted testimony and lack of clarity to reject his evidence; and 2) by referring to the mother's testimony about the appellant's "thoughts" in connection with her daughter.

Lack of clarity

[5] The trial judge rejected the appellant's testimony in part because of what he termed a "rambling and confusing account" of what transpired the morning after the event. The trial judge quoted from an answer the appellant gave to demonstrate the point. The appellant argues that this was unfair. We reject this submission.

[6] The trial judge's description of the testimony was accurate. The evidence concerned the events on the morning after the alleged assault, not the assault itself. It was open to the trial judge to consider his impressions as part of the credibility analysis. More significantly, the trial judge conducted a detailed review of the appellant's evidence and rejected it in its entirety, largely based on the acceptance beyond a reasonable doubt of the evidence of the complainant and other Crown witnesses.

The “thoughts”

[7] The complainant’s mother testified about a previous allegation of voyeurism involving the appellant and her daughter. These charges have been dismissed. She testified that the morning after the incident, the appellant admitted that he had thoughts that caused him to go to the fireplace where the complainant was sleeping. The boyfriend corroborated this evidence.

[8] The appellant submits that, having correctly instructed himself not to consider the alleged voyeurism incident, the trial judge nonetheless relied on the comment by the mother that the appellant had thoughts about his step-daughter, and wrongly ascribed a sexual nature to those thoughts. The appellant argues that the inference drawn by the trial judge that the thoughts were sexual was not reasonably available in the absence of the evidence of voyeurism. We reject this submission.

[9] In any event, the trial judge was entitled to refer to and rely upon the mother’s comments, which were made in the context of a heated discussion about sexual activity. It was open to the trial judge to accept her interpretation which was also corroborated by the boyfriend. The trial judge was entitled to consider the context of the conversation and both witnesses’ interpretation of the meaning in drawing his own reasonable inference. It was a reasonable inference from all of the evidence—excluding the alleged voyeurism—that the thoughts

were sexual in nature. The trial judge's reasons clarify that he was not considering the voyeurism allegation.

[10] For these reasons, the appeal is dismissed.

"Alexandra Hoy A.C.J.O."
"Doherty J.A."
"M.L. Benotto J.A."